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The rule of law at the national and international levels

The rule of law at the national and international levels

Interim report of the Secretary-General

Summary

The present interim report, prepared pursuant to General Assembly resolution 61/39, contains preliminary information regarding the inventory of the current activities of the organs, bodies, offices, departments, funds and programmes within the United Nations system devoted to the promotion of the rule of law at the national and international levels, to be submitted to the General Assembly at its sixty-third session.

Section II of the interim report contains information concerning the preparation of the inventory, including the collection of the relevant information. Section III contains a preliminary list of the current rule of law activities within the United Nations system and of the various organs, bodies, offices, departments, funds and programmes engaged in those activities.

* A/62/150.

I. Introduction

1. In its resolution 61/39 of 4 December 2006, entitled "The rule of law at the national and international levels", the General Assembly, *inter alia*, requested the Secretary-General to prepare an inventory of the current activities of the various organs, bodies, offices, departments, funds and programmes within the United Nations system devoted to the promotion of the rule of law at the national and international levels for submission at its sixty-third session, and to submit an interim report thereon to the Assembly for its consideration at its sixty-second session.

2. The present interim report contains information regarding the preparation of the requested inventory, including the procedure for the collection of relevant information, and a preliminary list of the current rule of law activities within the United Nations system and of the offices engaged in those activities. A more detailed description of the activities will be included in the inventory to be submitted to the General Assembly at its sixty-third session.

II. Preparation of the inventory to be submitted at the sixty-third session

3. The first step in the preparation of the inventory consisted of identifying, as a factual matter, the current activities within the United Nations system devoted to the promotion of the rule of law at the national and international levels. For that purpose, the relevant reports and other documents previously issued by the United Nations relating to the promotion of the rule of law were examined.

4. The review of the relevant documentation led to the identification of a broad spectrum of activities undertaken by the United Nations for the promotion of the rule of law at the national and international levels. The objective of the inventory being to provide Member States with a comprehensive and up-to-date information tool on the United Nations involvement in the promotion of the rule of law, these activities were organized into general categories to be used for the purpose of collecting information from the relevant entities within the system.¹ Accordingly, in the light of resolution 61/39, two main categories of activities were identified: those intended to promote the rule of law at the international level, and those intended to promote it at the national level. Under these two main categories, the activities were further divided into subcategories on the basis of the needs of Member States which they were designed to address in the field of promotion of the rule of law.

5. The general categories and subcategories of rule of law activities identified on the basis of this initial review are as follows:

(a) *Activities relating to the promotion of the rule of law at the international level:*

¹ The inventory focuses on those United Nations activities for the promotion of the rule of law at the national and international levels having an operational character (in particular, activities carried out for the benefit of Member States). It does not include activities relating to the internal management of the Secretariat or to the functioning of the organs of the United Nations. See also para. 7 below.

- (i) Activities relating to the teaching, dissemination and promotion of international law;
- (ii) Activities relating to assistance in the domestic implementation of international law;
- (iii) Activities relating to dispute resolution at the international level;
- (iv) Activities relating to conflict resolution and transitional justice;
- (b) *Activities relating to the promotion of the rule of law at the national level:*

- (i) Activities relating to the strengthening of administrative institutions and to public law and governance issues;
- (ii) Activities relating to the administration of justice and law enforcement.

6. Under resolution 61/39, the Secretary-General is requested to prepare an inventory of the current rule of law activities performed by "the various organs, bodies, offices, departments, funds and programmes within the United Nations system". The Codification Division of the Office of Legal Affairs identified the offices of the Secretariat, the regional commissions and the United Nations programmes, funds and other bodies to be contacted for the purposes of the preparation of the inventory.

7. As a consequence, the inventory under preparation will essentially aim at providing information regarding the activities performed within the United Nations system at the Secretariat level, rather than the action undertaken by intergovernmental bodies (such as the General Assembly, the Security Council, and the Economic and Social Council) or expert bodies (such as the International Law Commission, monitoring bodies under the various human rights treaties, and so forth), whose activities are widely publicized and well known to Governments.

8. Accordingly, a total of 52 organs, bodies, offices, departments, funds and programmes within the United Nations system were invited to provide relevant information regarding their activities for the promotion of the rule of law (for the complete list, see the annex to the present report).

9. Twelve of the entities contacted indicated that they were not involved in any activity devoted to the promotion of the rule of law.²

10. The following 40 entities provided information relating to their activities devoted to the promotion of the rule of law at the national and international levels: the Counter-Terrorism Committee Executive Directorate; the Department of Economic and Social Affairs; the Department of Peacekeeping Operations; the Department of Political Affairs; the Department of Public Information; the Economic and Social Commission for Western Asia (ESCWA); the Economic

² These were: the Department for General Assembly and Conference Management; the Department of Management; the Department of Safety and Security; the Economic and Social Commission for Asia and the Pacific; the Office of Central Support Services; the Office of Human Resources Management; the Office of Internal Oversight Services; the Office of Programme Planning, Budget and Accounts; the Office of the Special Adviser on Africa; the United Nations Fund for International Partnerships; the United Nations International Research and Training Institute for the Advancement of Women; and the United Nations Research Institute for Social Development.

Commission for Africa (ECA); the Economic Commission for Europe (ECE); the Economic Commission for Latin America and the Caribbean (ECLAC); the Executive Office of the Secretary-General; the Registry of the International Court of Justice; the Registry of the International Criminal Tribunal for Rwanda; the Registry of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991; the Joint United Nations Programme on HIV/AIDS (UNAIDS); the Legal Liaison Office of the United Nations Office at Geneva; the Office for Disarmament Affairs; the Office for the Coordination of Humanitarian Affairs; the Office of Legal Affairs; the Office of the Special Representative of the Secretary-General for Children and Armed Conflict; the Office of the United Nations High Commissioner for Human Rights (OHCHR); the Office of the United Nations High Commissioner for Refugees (UNHCR); the Office of the United Nations Special Coordinator for the Middle East Peace Process; the United Nations Children's Fund (UNICEF); the United Nations Compensation Commission; the United Nations Conference on Trade and Development (UNCTAD); the United Nations Democracy Fund; the United Nations Development Fund for Women (UNIFEM); the United Nations Development Programme (UNDP); the United Nations Environment Programme (UNEP); the United Nations Human Settlements Programme (UN-Habitat); the United Nations Institute for Disarmament Research; the United Nations Institute for Training and Research (UNITAR); the United Nations Interregional Crime and Justice Research Institute; the United Nations Office for Project Services; the Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States; the United Nations Office on Drugs and Crime; the United Nations Population Fund (UNFPA); the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA); the United Nations University; and the World Food Programme (WFP).

11. It should be recalled that, in his report entitled "Uniting our strengths: Enhancing United Nations support for the rule of law" (A/61/636-S/2006/980), the Secretary-General established within the Secretariat an inter-agency mechanism, the Rule of Law Coordination and Resource Group, chaired by the Deputy Secretary-General and comprised of principals from key United Nations entities, to provide, at the highest level, overall policy direction, coherence, coordination and quality control of United Nations system-wide rule of law activities. A small but substantive secretariat unit will support the Group and the Deputy Secretary-General as chair of the Group. At the direction of the Deputy Secretary-General, the Unit will seek to identify areas of synergy and facilitate cooperation and coordination among the various United Nations entities, given the disparate range of rule of law activities system wide. It should also be recalled that, as referred to in that report, a division of labour is being established among the key United Nations actors in which designated lead entities will assume clearly defined coordination and other responsibilities for specific areas of rule of law activity.

III. Preliminary list of current rule of law activities within the United Nations system and of the entities engaged in those activities

12. A preliminary list of the current activities within the United Nations system devoted to the promotion of the rule of law and of the entities engaged in those activities is provided below on the basis of the information received at this stage. The inventory to be submitted to the General Assembly at its sixty-third session will provide a more detailed description of these activities, taking into account any additional information received from the relevant entities.³

A. Activities relating to the promotion of the rule of law at the international level

1. Activities relating to the teaching, dissemination and promotion of international law

13. Activities relating to the promotion of the signature, ratification and/or application of treaties and other international instruments are performed by the Department of Economic and Social Affairs, the Department of Political Affairs, the Department of Public Information, the Office for Disarmament Affairs, the Office of Legal Affairs, the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, OHCHR, UNHCR, UNIFEM and the United Nations Office on Drugs and Crime.

14. Activities relating to the general promotion of international law are performed by the Department of Public Information, the Executive Office of the Secretary-General, the Office of Legal Affairs, the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, OHCHR, UNDP, UNEP, the United Nations Office on Drugs and Crime and UNFPA.

15. Activities relating to the provision of technical assistance or advice on international law matters are performed by the International Tribunal for the Former Yugoslavia, the Office for the Coordination of Humanitarian Affairs, the Office of Legal Affairs, OHCHR, UNHCR, UNCTAD, the United Nations Democracy Fund, UNEP, the United Nations Interregional Crime and Justice Research Institute and the United Nations Office on Drugs and Crime.

16. Activities of setting of international standards are performed by OHCHR, UNHCR and the United Nations Office on Drugs and Crime.

17. Activities relating to the provision of material and logistical support for the application of international law are performed by OHCHR and the Office of Legal Affairs.

18. Activities relating to capacity-building (the organization of their participation in training courses, fellowships, seminars or workshops) in international law are performed by the Department of Economic and Social Affairs, the Department of

³ Subsequent to the submission of the relevant information for the preparation of the inventory, some entities indicated that they performed additional rule of law activities without providing any further information. These additional activities are included in the present interim report on a provisional basis and will be reflected in the final inventory only if the necessary information is provided by the entities concerned in a timely manner.

Peacekeeping Operations, the Department of Political Affairs, ESCWA, ECA, the International Criminal Tribunal for Rwanda, the Legal Liaison Office of the United Nations Office at Geneva, the Office for Disarmament Affairs, the Office of Legal Affairs, the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, OHCHR, UNHCR, the Office of the United Nations Special Coordinator for the Middle East Peace Process, UNCTAD, UNIFEM, UNDP, UNEP, UNITAR, the United Nations Interregional Crime and Justice Research Institute, the United Nations Office on Drugs and Crime, UNFPA, UNRWA, UNU and WFP.

19. Activities relating to the publication of materials in international law (dissemination) are performed by the Department of Economic and Social Affairs, the Department of Political Affairs, the Department of Public Information, ESCWA, the International Court of Justice, UNAIDS, the Office for Disarmament Affairs, the Office of Legal Affairs, OHCHR, UNHCR, UNCTAD, UNDP, UNEP, the United Nations Institute for Disarmament Research, the United Nations Interregional Crime and Justice Research Institute, the Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, the United Nations Office on Drugs and Crime, UNFPA and UNU.

20. Activities relating to the publication of electronic and audio-visual tools and databases in international law (dissemination) are performed by the Department of Public Information, the International Court of Justice, the International Tribunal for the Former Yugoslavia, the Office of Legal Affairs, OHCHR, UNHCR, UNCTAD, UNEP and the United Nations Office on Drugs and Crime.

21. Activities relating to the provision of general information about international law and United Nations activities are performed by the Department of Political Affairs, the Department of Public Information, the International Court of Justice, the Legal Liaison Office of the United Nations Office at Geneva, the Office of Legal Affairs, OHCHR and UNCTAD.

2. Activities relating to assistance in the domestic implementation of international law

22. Activities relating to capacity-building in the domestic implementation of international law are performed by ECA, the Department of Peacekeeping Operations, the Department of Political Affairs, UNAIDS, the Office for Disarmament Affairs, the Office for the Coordination of Humanitarian Affairs, the Office of Legal Affairs, OHCHR, UNHCR, UNCTAD, UNIFEM, UNEP, UN-Habitat, UNITAR, the United Nations Interregional Crime and Justice Research Institute, the Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States and the United Nations Office on Drugs and Crime.

23. Activities relating to monitoring, collection of information and/or reporting on the domestic implementation of international law are performed by the Office of Legal Affairs, OHCHR, UNHCR and UN-Habitat.

24. Activities relating to dissemination (preparation of manuals, model rules and other types of general guidelines) concerning the domestic implementation of international law are performed by the Department of Economic and Social Affairs, the Department of Political Affairs, ECA, UNAIDS, the Office of Legal Affairs,

OHCHR, UNHCR, the Office of the United Nations Special Coordinator for the Middle East Peace Process, UNCTAD, UNEP, UN-Habitat, the United Nations Institute for Disarmament Research, UNITAR, the United Nations Interregional Crime and Justice Research Institute and UNFPA.

25. Activities relating to the provision of technical assistance in the preparation of national legal instruments for the domestic implementation of international law are performed by the Department of Peacekeeping Operations, the Department of Political Affairs, UNAIDS, the Office for Disarmament Affairs, the Office of Legal Affairs, the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, OHCHR, UNHCR, UNCTAD, UNIFEM, UNDP, UNEP and the United Nations Office on Drugs and Crime.

26. Activities relating to the implementation of programmes combining training, awareness-raising, support for national monitoring entities, development of tools, etc. for the domestic implementation of international law are performed by the Department of Political Affairs, OHCHR, UNIFEM, UNDP and the United Nations Office on Drugs and Crime.

27. Activities relating to general promotion of the domestic implementation of international law are performed by the Department of Political Affairs, ESCWA, ECA, the Office for Disarmament Affairs, OHCHR, the United Nations Democracy Fund, UNIFEM, UNFPA and UN-Habitat.

28. Activities relating to the provision of material and logistical support for the domestic implementation of international law are performed by UNHCR.

29. Activities relating to the strengthening of coordination and cooperation for the domestic implementation of international law are performed by the Office of Legal Affairs, OHCHR, UNHCR and the United Nations Interregional Crime and Justice Research Institute.

3. Activities relating to dispute resolution at the international level

30. Activities relating to good offices, mediation, fact-finding, judicial proceedings and other means of settlement of international disputes are performed by the Department of Political Affairs, the Executive Office of the Secretary-General, the International Court of Justice, the Office of Legal Affairs, the Office of the United Nations Special Coordinator for the Middle East Peace Process and UNCTAD.

31. Activities relating to the provision of material and logistical support to States for the settlement of international disputes are performed by the Office of Legal Affairs.

4. Activities relating to conflict resolution and transitional justice

32. Activities relating to the establishment and operation of international and hybrid criminal tribunals are performed by the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia, the Office of Legal Affairs, the Office of the Special Representative of the Secretary-General for Children and Armed Conflict and OHCHR.

33. Activities relating to the establishment and operation of other transitional justice mechanisms (consultation processes, truth and reconciliation processes, fact-

finding and commissions of inquiry, protection of victims and reparation programmes) are performed by the Department of Peacekeeping Operations, the Department of Political Affairs, the International Criminal Tribunal for Rwanda, the Office of Legal Affairs, the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, OHCHR, UNHCR, the United Nations Compensation Commission and UNDP.

34. Activities relating to capacity-building, dissemination and advocacy in the field of conflict resolution and transitional justice are performed by the Department of Economic and Social Affairs, the Department of Political Affairs, OHCHR and UNITAR.

35. Activities relating to the implementation of programmes combining capacity-building and technical assistance in the establishment and/or operation of national institutions and processes in the context of conflict resolution and transitional justice are performed by the Department of Peacekeeping Operations, the Department of Political Affairs, the International Tribunal for the Former Yugoslavia, OHCHR, UNICEF, UNIFEM and UNDP.

B. Activities relating to the promotion of the rule of law at the national level

1. Activities relating to the strengthening of administrative institutions, and public law and governance issues

36. Activities relating to capacity-building for public officials (in legislative bodies, human rights bodies, the public administration, etc.) in the field of the rule of law are performed by the Department of Economic and Social Affairs, the Department of Peacekeeping Operations, the Department of Political Affairs, ESCWA, the Office for the Coordination of Humanitarian Affairs, the Office of Legal Affairs, OHCHR, UNHCR, UNDP, UNEP, UN-Habitat, UNITAR and the United Nations Office on Drugs and Crime.

37. Activities relating to capacity-building for civil society institutions in the field of the rule of law are performed by the Department of Political Affairs, the International Criminal Tribunal for Rwanda, OHCHR, UNHCR, the United Nations Democracy Fund and UNDP.

38. Activities relating to the interim exercise of executive and administrative functions are performed by the Department of Peacekeeping Operations.

39. Activities relating to the preparation of model laws, manuals and other tools as general guidelines on legal reform are performed by the Department of Peacekeeping Operations, the Office of Legal Affairs, OHCHR, UNHCR, UNCTAD and the United Nations Office on Drugs and Crime.

40. Activities relating to the provision of technical assistance or advice to public institutions in the field of the rule of law (including legal reform, elections, human rights, public law issues (land and property, registration, national identification, citizenship and statelessness), corruption, money-laundering, gender issues, children's issues, protection of minorities, environment, etc.) are performed by the Department of Economic and Social Affairs, the Department of Peacekeeping Operations, the Department of Political Affairs, ESCWA, ECA, the International

Criminal Tribunal for Rwanda, the Office of Legal Affairs, OHCHR, UNHCR, the Office of the United Nations Special Coordinator for the Middle East Peace Process, UNCTAD, the United Nations Democracy Fund, UNIFEM, UNDP, UNEP, the United Nations Interregional Crime and Justice Research Institute, the United Nations Office for Project Services, the United Nations Office on Drugs and Crime, UNFPA and UN-Habitat.

41. Activities relating to the provision of technical assistance or advice to civil society institutions in the field of the rule of law are performed by OHCHR, UNDP and the Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States.

42. Activities relating to the implementation of programmes combining capacity-building, dissemination and promotion of rule of law issues are performed by the Department of Political Affairs, OHCHR, UNIFEM, UNDP, the United Nations Interregional Crime and Justice Research Institute, the United Nations Office for Project Services, UNFPA and UN-Habitat.

43. Activities relating to the promotion and dissemination of rule of law issues are performed by the Department of Political Affairs, the Executive Office of the Secretary-General, the International Criminal Tribunal for Rwanda, UNAIDS, OHCHR, the United Nations Democracy Fund, UNFPA and UN-Habitat.

2. Activities relating to the administration of justice and law enforcement

44. Activities relating to capacity-building in the administration of justice and law enforcement are performed by the Department of Peacekeeping Operations, the Department of Political Affairs, the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia, UNAIDS, the Office of Legal Affairs, OHCHR, UNHCR, UNDP, UNEP, the United Nations Interregional Crime and Justice Research Institute and the United Nations Office on Drugs and Crime.

45. Activities relating to the provision of technical assistance or advice in the administration of justice and law enforcement are performed by the Counter-Terrorism Committee Executive Directorate, the Department of Economic and Social Affairs, the Department of Peacekeeping Operations, the Department of Political Affairs, the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia, the Office for Disarmament Affairs, OHCHR, UNHCR, the Office of the United Nations Special Coordinator for the Middle East Peace Process, UNCTAD, the United Nations Democracy Fund, UNDP, UN-Habitat, the United Nations Interregional Crime and Justice Research Institute, the United Nations Office for Project Services and the United Nations Office on Drugs and Crime.

46. Activities relating to the provision of material and logistical assistance in the administration of justice and law enforcement are performed by the Department of Peacekeeping Operations and UNDP.

47. Activities relating to assistance in monitoring and reporting on judicial proceedings and law enforcement are performed by the Department of Peacekeeping Operations, the International Criminal Tribunal for Rwanda, OHCHR and UNDP.

48. Activities relating to the strengthening of legal aid, access to justice and fair trial are performed by the Department of Economic and Social Affairs, the

Department of Peacekeeping Operations, the Department of Political Affairs, the International Criminal Tribunal for Rwanda, OHCHR, UNHCR, UNDP, UN-Habitat and the United Nations Office on Drugs and Crime.

49. Activities relating to the promotion of customary, traditional and community-based justice and dispute resolution mechanisms are performed by the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, OHCHR, UNHCR and UNDP.

Annex

List of entities contacted for the purposes of the preparation of the inventory

Counter-Terrorism Committee Executive Directorate
Department of Economic and Social Affairs
Department for General Assembly and Conference Management
Department of Management
Department of Peacekeeping Operations
Department of Political Affairs
Department of Public Information
Department of Safety and Security
Economic and Social Commission for Asia and the Pacific
Economic and Social Commission for Western Asia
Economic Commission for Africa
Economic Commission for Europe
Economic Commission for Latin America and the Caribbean
Executive Office of the Secretary-General
Registry of the International Court of Justice
Registry of the International Criminal Tribunal for Rwanda
Registry of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991
Joint United Nations Programme on HIV/AIDS
Legal Liaison Office of the United Nations Office at Geneva
Office for Disarmament Affairs
Office for the Coordination of Humanitarian Affairs
Office of Central Support Services
Office of Human Resources Management
Office of Internal Oversight Services
Office of Legal Affairs
Office of Programme Planning, Budget and Accounts
Office of the Special Adviser on Africa
Office of the Special Representative of the Secretary-General for Children and Armed Conflict

Office of the United Nations High Commissioner for Human Rights
Office of the United Nations High Commissioner for Refugees
Office of the United Nations Special Coordinator for the Middle East Peace Process
United Nations Children's Fund
United Nations Compensation Commission
United Nations Conference on Trade and Development
United Nations Democracy Fund
United Nations Development Fund for Women
United Nations Development Programme
United Nations Environment Programme
United Nations Fund for International Partnerships
United Nations Human Settlements Programme
United Nations Institute for Disarmament Research
United Nations Institute for Training and Research
United Nations International Research and Training Institute for the Advancement
of Women
United Nations Interregional Crime and Justice Research Institute
United Nations Office for Project Services
Office of the High Representative for the Least Developed Countries, Landlocked
Developing Countries and Small Island Developing States
United Nations Office on Drugs and Crime
United Nations Population Fund
United Nations Relief and Works Agency for Palestine Refugees in the Near East
United Nations Research Institute for Social Development
United Nations University
World Food Programme



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Sustainable development

Implementation of Agenda 21, the Programme for the Further Implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development

Report of the Secretary-General

Summary

The present report has been prepared in response to General Assembly resolution 61/195 of 20 December 2006. It provides an update on actions taken by Governments, organizations of the United Nations system and major groups in advancing implementation of sustainable development goals and targets, including through partnerships for sustainable development. The report also contains an overview of recent trends in implementation, a summary of the outcomes of intergovernmental bodies, and updates of ongoing inter-agency activities.

Some common features in implementation are emerging, facilitating ongoing efforts by all implementation actors to exchange lessons learned and best practices. Developing a vision and a strategic focus for sustainable development, adopting sustainable development principles to guide sector-specific plans, taking an integrated and holistic approach, with an emphasis on linkages and whole systems, ensuring broad participation in implementation, in particular by the stakeholders, and developing a practical focus on specific measures and corresponding criteria — these are some of the steps that Governments and other stakeholders have taken to expedite implementation. Member States, organizations of the United Nations system and major groups should stay on this implementation track while aiming for accelerated progress.

* A/62/150.

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I. Background

1. In its resolution 61/195 of 20 December 2006, the General Assembly called for the effective implementation of the commitments, programmes and time-bound targets adopted at the World Summit on Sustainable Development; reaffirmed the objective of strengthening the implementation of Agenda 21,¹ including through the mobilization of financial and technological resources, as well as capacity-building programmes, in particular for developing countries; and reiterated that the Commission on Sustainable Development was the high-level body responsible for sustainable development within the United Nations system and served as a forum for the consideration of issues related to the integration of the three dimensions of sustainable development, and called upon Governments to support the work of the Commission.
2. In this regard, the General Assembly reiterated its invitation to the relevant United Nations organizations, programmes and funds, the Global Environment Facility and international, regional, financial and trade institutions, within their mandates, to participate actively in the work of the Commission. The Assembly provided further guidance on the preparations for the fifteenth session of the Commission.
3. The present report has been prepared pursuant to General Assembly resolution 61/195 to provide an update on progress in the implementation of that resolution. It should be read in conjunction with other reports submitted under the agenda item on sustainable development, including those related to the United Nations Environment Programme, the United Nations Human Settlements Programme (UN-Habitat), the Convention on Biological Diversity, the United Nations Framework Convention on Climate Change, and the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, as well as the report on matters relating to small island developing States.

II. Overview

4. The present year marks the twentieth anniversary of the publication of the report of the World Commission on Environment and Development entitled *Our Common Future*² (also called the Brundtland report, after Gro Harlem Brundtland; the Chairperson of the Commission). Over the last two decades, the report has made significant contributions to raising the awareness of Governments, international organizations, and major groups, including industry and business, as well as the general public, with regard to the imperative need for making the transition towards sustainable development. The concept of sustainable development, defined in the report as development that “meets the needs of the present without compromising the ability of future generations to meet their own needs”, shone a spotlight on a new dimension of development — equity and justice, between and within generations, and the responsibility to act accordingly.

¹ *Report of the United Nations Conferences on Environment and Development, Rio de Janeiro, 3-14 June 1992*, vol. I, *Resolutions Adopted by the Conference* (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution I, annex II.

² Oxford, United Kingdom, and New York, Oxford University Press, 1987; see also document A/42/427, annex.

5. The United Nations Conference on Environment and Development, held in Rio de Janeiro in 1992, integrated economic and social development and environmental protection into the concept of sustainable development. Through the principles contained in the Rio Declaration on Environment and Development³ and Agenda 21, the Conference highlighted the urgent need for addressing in an integrated and balanced manner the economic, social and environmental aspects of sustainable development and provided both guidance and a blueprint for follow-up action.

6. The global conferences and review meetings held since Rio have reaffirmed the Rio principles and Agenda 21. In 2001, the General Assembly had decided that the World Summit on Sustainable Development should be convened in Johannesburg, South Africa, from 26 August to 4 September 2002, to provide further momentum for achieving sustainable development. The Plan of Implementation of the World Summit on Sustainable Development ("Johannesburg Plan of Implementation")⁴ included time-bound goals and targets and placed a clear and strong emphasis on actions that would enable implementation at all levels. Previous reports submitted to the Assembly on follow-up to the Summit described progress in formulating and implementing national sustainable development strategies, in action by local authorities, in growing multi-stakeholder participation, including through partnerships between Governments and the business sector, and in education for sustainable development, among other areas. A sharper focus on addressing barriers and constraints and on finding solutions is fostering a culture of implementation at local, national, regional and international levels.

7. Some common features in implementation are emerging that have facilitated ongoing efforts by all implementation actors to exchange lessons learned and best practices. Among other actions, developing a vision and a strategic focus for sustainable development is often a key starting point in the process of implementation. As highlighted in recent reports to the General Assembly, national Governments have been formulating and implementing national sustainable development strategies to put in place a national strategic framework for guiding and coordinating implementation. Efforts to formulate and implement national sustainable development strategies, including through voluntary peer review exercises, are continuing in many countries. Profiles of national sustainable development strategies, including current status, are featured on the website of the secretariat of the Commission on Sustainable Development (<http://www.un.org/esa/sustdev/natlinfo/natlinfo.htm>).

8. In some instances, the principles of sustainable development have been applied to guide other national economic, social or sector development plans or strategies. China, for instance, applied the principles of sustainable development in formulating its eleventh five-year plan (2006-2010) and has since been striving for the building of a harmonious society and the protection of environmental and natural resources, while further advancing its economic growth. Just as China's remarkable progress in poverty reductions has contributed to global efforts to achieve the Millennium

³ *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992*, vol. I, *Resolutions Adopted by the Conference* (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex I.

⁴ *Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August-4 September 2002* (United Nations publication, Sales No. E.03.II.A.1 and corrigendum), chap. I, resolution 2, annex.

Development Goals, so will progress in sustainable development in China inspire and galvanize further action in implementation elsewhere.

9. In many countries, Governments have also applied the principles of sustainable development in guiding the formulation of sector strategies. For instance, in developing its agriculture sector, Jordan has taken into consideration the role of agriculture both in economic and social development and in protecting the country's natural resources. Jordan's National Strategy for Agricultural Development 2002-2010 considers both the current situation of the agricultural sector and its future under "status quo" and "development" scenarios. The Strategy then presents profiles of proposed projects in five subsectors, examining them through an integrated approach encompassing economic, social and environmental objectives, which sets out these objectives one by one.

10. In Bulgaria, sustainable land resources management is closely linked with the national environment strategy for 2005-2014. The Government has undertaken to establish legislative and regulatory frameworks for sustainable land resources management and capacity-building through a number of programmes and measures that address social, economic and environmental aspects of land management. Similarly, in Colombia, the Government has integrated the national action plan to combat drought and desertification into the national development plan for 2002-2010, addressing in an integrated manner issues of forests conservation, water management, restoration of river basins, and regional economic and social imbalances.

11. Taking an integrated and holistic approach, with an emphasis on linkages and whole systems, is another important step that can facilitate implementation. For instance, in Ghana, the Government has adopted the National Action Programme to Combat Desertification as a strategic planning framework for the protection and sustainable management of natural resources in deserts and areas affected by desertification. Rather than focus on deserts and areas affected by desertification alone, the Programme aims to implement environmentally sound, socially inclusive development programmes for drought-prone, semi-arid and arid areas, based on participatory mechanisms and on integration of poverty alleviation strategies and other sector programmes, including forestry, agriculture, water and health, into ongoing efforts to combat drought and desertification. Furthermore, learning from its recent implementation experience, the Government is mainstreaming the programme for combating drought and desertification into the country's poverty reduction strategies and national development planning framework.

12. Broad participation in implementation, in particular by the stakeholders, is also a key element in ensuring progress in implementation. In Croatia, for example, the Government developed the Croatian Plan for Agriculture and Rural Development (2005-2006) through an approach that entailed involving all the stakeholders in addressing simultaneously the economic, social and environmental dimensions of its agriculture and rural development. The implementation of the Plan has been based on a "bottom-up" approach, with investments of State, county, and local resources, as well as user fees, pooled together. There is active participation of local governments in the whole decision-making process. Such broad-based participation involving all stakeholders has helped to ensure that the Plan preserves and develops rural areas, as well as traditional features of Croatian agriculture, while promoting the production and marketing of food and agricultural products.

13. Developing a practical focus on specific measures and corresponding criteria has also helped move forward implementation. This results-oriented approach, often using indicators to measure progress, has been adopted to monitor implementation by an increasing number of implementation actors. For instance, in industry and business, a growing number of companies have appointed a "chief sustainability officer" not only to address environmental concerns but also to tackle specific issues such as safety, compliance and acquisition. In some instances, chief sustainability officers also have an increasingly larger say as regards products development and marketing.

14. Business consultancies have seized on this practical focus and have developed criteria to help companies achieve sustainable development. Deloitte Consulting, for instance, has used the following criteria to define sustainability of business practices: waste is reduced, eliminated or reused; net consumption of resources (capital, human or natural) for a specific product or service is reduced; the consumed resource is partially or completely replaced; the ratios of natural to man-made and organic to synthetic are increased; and the net global impact footprint is reduced.⁵ Other economic, social and environmental criteria and indicators are being developed to foster sustainable business practices.

15. Developing a vision and a strategic focus for sustainable development, adopting sustainable development principles to guide sector-specific plans, taking an integrated and holistic approach, with an emphasis on linkages and whole systems, broad participation in implementation, in particular by the stakeholders, and developing a practical focus on specific measures and corresponding criteria — these are some of the steps that Governments and other stakeholders have taken to expedite implementation.

III. Actions at the intergovernmental level

16. At the intergovernmental level, deliberations in the Economic and Social Council in 2007 have focused on strengthening efforts at all levels to promote pro-poor sustained economic growth, including through equitable macroeconomic policies, and on strengthening efforts to eradicate poverty and hunger, including through the global partnership for development. The Commission on Sustainable Development at its policy session continued its thematic focus on energy for sustainable development, industrial development, air pollution/atmosphere and climate change.

A. Economic and Social Council

17. During its 2007 substantive session held in Geneva from 2 to 27 July, the Economic and Social Council focused its thematic discussion on strengthening efforts at all levels to promote pro-poor sustained economic growth, including through equitable macroeconomic policies. The Council devoted its first annual ministerial review to strengthening efforts to eradicate poverty and hunger, including through the global partnership for development. The Council adopted a ministerial declaration in which Ministers reaffirmed that development is a central

⁵ See http://www.deloitte.com/dtt/section_node/0,1042,sid%253D143146,00.html.

goal in and of itself and that sustainable development in its economic, social and environmental aspects constitutes a key element of the overarching framework of United Nations activities. Ministers also reiterated^d that eradicating poverty is the greatest global challenge facing the world today and an indispensable requirement for sustainable development, in particular for developing countries.

18. Among other actions, Ministers reaffirmed their commitment to achieving the goal of sustainable development including through the implementation of Agenda 21 and the Johannesburg Plan of Implementation. Ministers also reiterated that the eradication of poverty, hunger and malnutrition, particularly as they affected children, was crucial for the achievement of the Millennium Development Goals and that rural and agricultural development should be an integral part of national and international development policies. In this regard, they called for increased productive investment in rural and agricultural development in order that food security might be achieved and for enhanced support for agricultural development and trade capacity-building in the agricultural sector in developing countries.

19. Ministers further recognized the negative impact of environmental degradation and climate change on sustainable development in all countries, especially developing countries, in particular the least developed countries, small island developing States and African countries, and reaffirmed that responses to climate change should be coordinated with social and economic development in an integrated manner, with a view to avoiding an adverse impact on the latter, taking into full account the legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty.

B. Outcome of the fifteenth session of the Commission on Sustainable Development

20. The fifteenth session of the Commission on Sustainable Development, which was held in New York from 30 April to 11 May 2007, was a policy session, focusing on the complex but important and interlinked issues of energy for sustainable development, industrial development, air pollution/atmosphere and climate change. Over 100 Ministers and deputy Ministers, along with more than 2,000 participants, attended the session.

21. Delegates undertook extensive and sustained negotiations on the four thematic issues, along with cross-cutting issues, working late into the night. Although negotiations were to have concluded on Tuesday, 8 May, before the beginning of the high-level segment, they continued throughout the latter, involving Ministers from the European Union (EU) and the Group of 77 and China during the last day of the session.

22. Delegates achieved near unanimity on industrial development and air pollution/atmosphere, topics for which the issue of time-bound targets and timetables had not been raised. They also made significant progress on energy and climate change, including, notably, in the area of access to energy as essential for poverty eradication. Agreements reached *ad referendum* on climate change included accelerating the transition to a lower greenhouse gas emitting economy, a first in intergovernmental negotiations. A number of the measures and actions, agreed *ad referendum* as of Friday, 11 May built upon those contained in the Johannesburg Plan of Implementation.

23. However, delegates remained divided on several key points. As a consequence, it was necessary for the Chairman to present a decision text for consideration by the Commission, reflecting text agreed *ad referendum* during the negotiations and the Chairman's best efforts to reconcile conflicting viewpoints in a fair and balanced manner. States members of the Group of 77 and China and the Alliance of Small Island States, as well as many other countries, accepted the Chairman's decision text. Germany, on behalf of States members of the European Union, as well as one country attending the session as an observer, rejected the text because agreement could not be reached particularly on time-bound targets for renewable energy, an international agreement on energy efficiency, the integration of energy policies into national planning by 2010, and a formal review arrangement for energy issues in the United Nations.

24. Despite the lack of a consensus decision text, the Commission achieved other, non-negotiated results. During the fifteenth session of the Commission, over 1,000 participants attended Learning Centre courses and Partnerships Fair activities, benefiting from Commission capacity-building activities; there were energetic discussions in the Partnerships Fair on how partnerships could contribute to improving access by the poor to modern energy. The large variety of intellectually stimulating side events and parallel events (more than 100 of such events were organized) enriched the session's programme of activities. The dynamic dialogue between Governments and major groups provided fresh perspectives from the civil society on the challenges ahead and actions required in the areas of energy, industry, air pollution and climate change. The round-table discussions during the high-level segment and the ministerial dialogue sessions were also well attended. The interactions between Ministers for energy and environment on energy and climate change were thought-provoking and highlighted the urgent need for intersectoral dialogue of decision makers. The dynamics of these dialogue sessions once again demonstrated the value added of the Commission as the only truly intergovernmental forum that deals with the linkages among the social, economic and environmental dimensions of sustainable development.

IV. Inter-agency cooperation and coordination

25. As an inter-agency network to help ensure coherence in the United Nations system's multidisciplinary response to decisions taken at the World Summit on Sustainable Development in the area of energy, UN-Energy has continued to serve as a gateway for sharing information, knowledge, experiences and good practices as well as initiatives in energy-related activities within the United Nations system. In 2007, UN-Energy issued the publication entitled "Sustainable bioenergy: A framework for decision makers", which seeks to structure the approach to the current discussions on bioenergy and represents one of the contributions of the organizations of the United Nations system to ongoing discussions on an important issue that needs further attention, analysis and valuation to enable appropriate trade-offs to be made and to ensure that the energy needs of people are met while, at the same time, the local and global environments are adequately protected.

26. Among other activities undertaken by UN-Energy were contributions to the fifteenth session of the Commission on Sustainable Development; various activities undertaken to implement projects designed to improve access to modern energy services, including in Africa; activities to promote renewable energy and energy

efficiency; and efforts to develop toolkits and other tools for policy integration, capacity-building and awareness-raising.

27. UN-Water continued its work within all aspects of water and sanitation in 2007. Starting from March 2007, representatives of UN-Water attended a series of meetings of the Secretary-General's Advisory Board on Water and Sanitation, updating the Advisory Board on UN-Water activities. UN-Water has also contributed to the preparatory activities of the International Year of Sanitation 2008 and implementation of the International Decade for Action, "Water for Life": 2005-2015. Thanks to donor support, UN-Water has set up associated programmes in Zaragoza and Bonn in support of the International Decade and in Perugia in support of the World Water Assessment Programme.

28. In 2007, the Department of Economic and Social Affairs of the United Nations Secretariat and the United Nations Environment Programme (UNEP) have continued their coordination work in the context of the 10-year framework of programmes on sustainable consumption and production. Among other activities, the two organizations supported the Third International Expert Meeting on the 10-Year Framework of Programmes for Sustainable Consumption and Production, held in Stockholm from 26 to 29 June 2007. The meeting reviewed progress achieved since the Second International Expert Meeting, held in San José in September 2005, and presented for discussion a first draft outline of the 10-Year Framework. The Meeting also provided an opportunity to explore the issue of how to engage effectively major groups, including the business sector and non-governmental organizations, that are working on sustainable consumption and production programmes either within their organizations or in their countries. The United Nations Development Programme (UNDP), one of the three designated implementing partners of the Global Environment Facility, continued to draw extensively on its broad network of country offices to provide support to countries in the development of effective policies and institutions. This support includes integrating environmental and development objectives into national development agendas and processes to protect the environment as well as reduce poverty. Further details on UNDP cooperation with partners and its recent work are further outlined in the annex.

V. Regional activities

29. The Economic Commission for Africa (ECA), following its restructuring in August 2006, has established a Division on Food Security and Sustainable Development for servicing the Africa Committee on Sustainable Development and for implementing programme activities in support of sustainable development in Africa. In 2006, among other regional activities, the Commission released an issue of "Africa's sustainable development bulletin"; a publication entitled "National councils for sustainable development in Africa: a review of institutions and their functioning"; and the first issue of the "sustainable development report on Africa". The Commission also continued to implement programme activities under its subprogramme on fostering sustainable development in Africa, through working in the areas of transforming agriculture and rural economy for sustainable development, strengthening regional cooperation for sustainable development, preparing a report on the development and implementation of national strategies for sustainable development, and monitoring regional trends in sustainable development.

30. Through its work on sustainable development, the Economic Commission for Europe (ECE) aims to promote sustainable development in its member countries in line with Agenda 21 and to safeguard the environment and human health. ECE also seeks to reduce pollution and minimize environmental damage with a view to avoiding compromising environmental conditions for future generations. To this end, ECE has adopted a four-pronged approach which comprises:

(a) Bringing together Governments through the Committee on Environmental Policy to formulate environmental policy and support its implementation by organizing seminars, workshops and advisory missions and providing a forum for sharing experiences and good practices;

(b) Taking an active role in regional and cross-sectoral processes, especially the "Environment for Europe" ministerial process;

(c) Assessing the efforts of individual countries to reduce pollution and manage natural resources, including through environmental impact assessments, and making recommendations on how to improve environmental performance;

(d) Implementing the five environmental treaties negotiated under the Commission's auspices.

31. The Economic and Social Commission for Asia and the Pacific (ESCAP) seeks to play a leadership role in guiding the Asian and Pacific region towards sustainable development through the implementation of the outcomes of the World Summit on Sustainable Development. The main objectives of its programmes are to promote regional and subregional cooperation for sustainable development and to strengthen the national capacity of members and associate members in designing and implementing environment and sustainable development policies and strategies that would enable them to maximize the benefits derived from globalization. In implementing these programmes, ESCAP works with stakeholders to address environmental problems by integrating environmental policies into national economic goals. In addition, ESCAP promotes partnerships between the public and private sectors, and between government and civil society. It provides the crucial link in these multifaceted and dynamic development processes between the global and national levels.

32. The Economic Commission for Latin America and the Caribbean (ECLAC) seeks to promote, simultaneously, economic growth, social development and environmental protection in the region, with a view to achieving an integrated and balanced promotion of the three dimensions of sustainable development. In so doing, ECLAC seeks to translate the vision of sustainable development in Latin America and the Caribbean into effective public policy that addresses the main areas of its programme activities, taking into account the environmental problems in the region identified as priorities by Governments, the comparative advantages of ECLAC in promoting sustainable development in the region, and the role of other relevant actors, such as other organizations of the United Nations system, regional development banks and bilateral donors, with a view to avoiding duplication and enhancing the synergetic potentials among these organizations. Recently, ECLAC developed a programme of work to mainstream sustainable development in its activities, focusing on climate change, and activities linking energy, air pollution, transportation urban issues, natural disasters and industrial development, with activities in these areas carried out in close cooperation between ECLAC

substantive divisions and other regional organizations. In addition, ECLAC organized its Fiscal Policy and the Environment seminars together with the International Monetary Fund (IMF), the Organization for Economic Cooperation and Development (OECD), the Inter-American Development Bank, the World Bank and GTZ (Deutsche Gesellschaft für Technische Zusammenarbeit).

33. The Economic and Social Commission for Western Asia (ESCWA) monitors the implementation of Agenda 21 and the Johannesburg Plan of Implementation in the region and assists member States in formulating, developing and implementing sustainable development policies. ESCWA also assists member States in introducing scientific and technological variables into socio-economic planning with a view to ensuring sustainable development. Recently, ESCWA organized the sixth session of the Committee on Energy and the seventh session of the Committee on Water Resources. During these sessions, delegates reviewed documents on the vision for and policies on energy, along with a five-year review of achievements on energy for sustainable development; they also discussed policy options for the implementation of integrated water resources management at national level and carried out a five-year review of progress achieved in the water sector. In addition, ESCWA conducted expert group meetings on energy for sustainable development, national institutional reforms for implementing integrated water resources management, and application of indicators and indices for water quality management. ESCWA is currently planning to organize a regional conference on land degradation issues in the Arab region.

34. In addition to conducting their regional and subregional activities, the five regional commissions also contributed to the policy discussions during the fifteenth session of the Commission on Sustainable Development and its Intergovernmental Preparatory Meeting for the session. Representatives of the five regional commissions, as well as regional development banks and other regional institutions, addressed, from regional perspective, policy options and possible actions to expedite implementation in the four thematic areas of: energy for sustainable development, industrial development, air pollution/atmosphere and climate change. The discussions were organized on a region-by-region basis with regional panellists making presentations followed by interactive dialogue with delegations. A summary of these discussions can be found in the report of the Commission on Sustainable Development on its fifteenth session.⁶

VI. Major groups

35. Major groups continue to contribute to the implementation of sustainable development on many levels, playing multiple roles as sustainable development advocates, implementers and stakeholders. Ranging from large international networks to small local community organizations, major groups utilize their expertise and knowledge to promote education in sustainable development, raise awareness of social, economic and environmental issues, and monitor progress towards the implementation of sustainable development.

36. Major groups also contribute to implementation through partnerships for sustainable development and by launching their own initiatives. For example, many

⁶ *Official Records of the Economic and Social Council, 2007, Supplement No. 9 (E/2007/29).*

local authorities are now setting emissions reduction standards for their cities, complementing national efforts to reduce the levels of greenhouse gases that contribute to climate change. Business and industry groups are actively engaged in contributing to the development of partnerships aimed at improving access to energy, especially in rural areas. Many case studies on the thematic cluster for the present implementation cycle were added during the current year to the Commission secretariat's online case studies for sustainable development database⁷ for this thematic cycle; these case studies shared examples of successful investments that supported the sustainable development of local communities. Women are recognized as particularly important stakeholders in efforts to overcome challenges related to access to energy and energy efficiency.

37. Building on the outcomes of the review year, major groups were also engaged in the work of the fifteenth session of the Commission on Sustainable Development, which included many opportunities for contributions by major groups, including during the Commission's Intergovernmental Preparatory Meeting. Major groups were invited by the Commission to share their views on policy options and possible actions to overcome key constraints and obstacles related to energy for sustainable development, industrial development, air pollution/atmosphere and climate change.

38. For the Intergovernmental Preparatory Meeting, major groups prepared papers outlining their priorities for action relevant to the thematic cluster. In keeping with the practice established since the eleventh session of the Commission on Sustainable Development, an integrated approach was maintained during the thematic discussions held throughout the meeting, with each segment including at least 2 interventions, amounting to a total of 54 interventions by major groups, including comments on the Chair's first draft of the negotiating document and closing remarks during the final plenary meeting. More than 100 individuals representing 45 organizations took part in the Meeting.

39. More than 700 representatives from 117 organizations participated in the Commission's fifteenth session. An interactive discussion with major groups held on the first day addressed major groups' proposals on practical measures and actions relevant to the thematic cluster of issues. During the high-level segment, major groups participated in two ministerial round tables and engaged in an interactive discussion with Ministers that outlined major groups' aspirations and priorities for action. A total of 63 interventions were made by major groups during this session.

40. Both the Intergovernmental Preparatory Meeting and the fifteenth session of the Commission maintained the level of full engagement of major groups in the work of the Commission, and major groups welcomed especially the variety of opportunities provided to them whereby they could interact with experts and delegates in thematic discussions. The continued efforts to enhance major groups' participation in the work of the Commission have made it possible for experts from major groups to serve as panellists in thematic discussions and to participate in all thematic, regional and small island developing States-related discussions. Major groups also actively participated in the Partnerships Fair and side events for both meetings, as well as in the Learning Centre held during the fifteenth session. Overall, the inputs and active participation of major groups added significant value to the outcome of this two-year cycle.

⁷ Accessible on the Internet at <http://webapps01.un.org/dsd/caseStudy/public/Welcome.do>.

VII. Partnerships for sustainable development

41. Voluntary multi-stakeholder partnerships working towards sustainable development goals have proved to be an important complementary outcome of the World Summit on Sustainable Development and a viable implementation mechanism. Partnerships continue to deliver results on the ground. They have proved to be a useful and credible vehicle for effecting change by catalysing government action, engaging a wide range of stakeholders and creating new, innovative models for implementation of sustainable development goals and commitments. As of July 2007, a total of 330 such initiatives had been registered with the secretariat of the Commission on Sustainable Development, an increase of 63 per cent in registration since the Summit.

42. Partnerships for sustainable development have a special character: they are specifically linked to the implementation of globally agreed commitments in the Johannesburg Plan of Implementation, Agenda 21 and/or the Programme for the Further Implementation of Agenda 21.⁸ As stressed at the Summit, these partnerships are not a substitute for government responsibilities and commitments; they are intended to strengthen implementation by involving all those stakeholders who can make a contribution to sustainable development.

43. The Commission on Sustainable Development had been designated by the World Summit as the focal point for discussion on partnerships that promote sustainable development. At its eleventh session in 2003, the Commission stressed that partnerships in the context of the Summit process and its follow-up should be developed and implemented in accordance with a set of agreed criteria and guidelines. The Commission agreed that information on partnerships for sustainable development should be made publicly available. As part of this information-sharing process, the Commission requested the secretariat to make information on partnerships available through a database accessible to all interested parties.

44. In February 2007, the Commission on Sustainable Development Partnerships website was further redesigned to add more relevant content, increase user-friendliness, improve navigation and enable easier access to partnerships-related information resources. New features added to the website included sections on partnerships news, new partnership registrations, partnerships updates, registration and updating procedures as well as searchable listings of web links, publications and events. The Partnerships website aims at assisting and facilitating the identification of partnerships' activities and their contributions to implementation by making available a wide array of practical information ranging from details on how to register new partnerships with the Commission secretariat, and information on upcoming partnerships-related meetings, to recent publications on registered partnerships and detailed guidelines and programme of activities at the Commission's Partnerships Fairs. These documents are available for download at the Partnerships website.

45. In May 2007, at the fifteenth session of the Commission, the Commission secretariat organized a Partnerships Fair to provide an opportunity for registered initiatives to showcase progress, network with existing and potential partners, create synergies between partnerships and learn from each other's experiences. The

⁸ General Assembly resolution S-19/2, annex.

Partnerships Fair also gave participants at the session an opportunity to gather information on, and discuss the important contribution of partnerships towards, supporting the implementation of sustainable development. Launching and registering new partnerships were particularly encouraged. The programme of activities included partnerships information desks and "partnerships in practice" interactive discussion sessions. These sessions were organized by the Commission secretariat to generate an open dialogue on practical issues related to the implementation of sustainable development through partnerships as well as maximize opportunities for participants at the fifteenth session to raise questions, identify challenges and share information on lessons learned and best practices.

46. In keeping with the Commission's 2007 policy-year focus on practical measures and options to expedite implementation of commitments, the interactive discussions at the Partnerships Fair offered an important opportunity to highlight on-the-ground experiences from partnership practitioners. Partnerships activities were also organized in February/March 2007 at the Intergovernmental Preparatory Meeting for the fifteenth session of the Commission. The Commission secretariat produced several online summary publications containing brief reports of the daily activities during both the Meeting and the annual session of the Commission (available from http://www.un.org/esa/sustdev/csd/csd15/PF/CSD-15_PF_programme.htm).

47. The fifteenth session of the Commission also marked the launch of the first session of the Partnership e-Forum aimed at fostering communication and strategic alliances between registered Commission partnerships through the sharing of best practices, exchange of lessons learned, and follow-up on meetings, conferences and publications.

48. Over the years, partnerships for sustainable development launched at the World Summit on Sustainable Development have continued to develop, grow and consolidate. New partnerships have also continued to be launched and to be registered with the Commission secretariat. By collaborating across all levels, pooling skills and resources, developing innovative policy, technical and financing solutions to overcoming barriers to sustainable development, Commission partnerships continue to demonstrate their impact on, and concrete contributions to, the implementation of internationally agreed sustainable development goals and commitments. At the same time, these initiatives are evolving by taking on new partners and building alliances with other partnerships working in complementary areas.

VIII. Conclusions and recommendations

49. Updates in this report show that implementation of sustainable development principles, goals and policies is continuing at all levels. Some common features in implementation are emerging, facilitating ongoing efforts by all implementation actors to exchange lessons learned and best practices. Developing a vision and a strategic focus for sustainable development; adopting sustainable development principles to guide sector-specific plans; taking an integrated and holistic approach, with an emphasis on linkages and whole systems; ensuring broad participation in implementation, in particular by the stakeholders; and developing a practical focus on specific measures and corresponding criteria — these are some of the steps that Governments and

other stakeholders have taken to expedite implementation. Member States, organizations of the United Nations system and major groups should stay on this implementation track while aiming for accelerated progress.

50. To that end, it is recommended that the General Assembly:

(a) Call on Governments, organizations of the United Nations system and major groups to continue expediting progress in implementation by exchanging lessons learned and best practices and, to this end, invite the Commission to continue improving its methods of work with a view to facilitating such exchanges;

(b) Call on Governments to continue providing their support to the Commission on Sustainable Development and to organize intersessional activities, taking into account the thematic cluster of issues to be considered by the Commission in 2008/2009 and, in this regard, to contribute to the Commission's trust fund in support of enhanced participation of representatives of developing countries and representatives of major groups in the work of the Commission;

(c) Invite the United Nations System Chief Executive Board for Coordination to continue monitoring, through the High-level Committee on Programmes, the operational efficiency and effectiveness of inter-agency collaborative mechanisms, including UN-Energy, UN-Water and other collaborative arrangements, in the follow-up to the World Summit on Sustainable Development;

(d) Call upon donor Governments and international financial institutions to increase official development aid to developing countries in the thematic areas of agriculture, rural development, land, drought, desertification and Africa.

Annex

Contribution by the United Nations Development Programme

1. The United Nations Development Programme (UNDP) continues to promote the vital role of environment and energy in achieving the long-term goal of sustainable development. According to data collected under the UNDP multi-year funding framework, the Programme disbursed \$950 million under environment and energy service lines during the period 2004-2006. Spending increased 30 per cent during the period, from \$269 million in 2004 to \$350 million in 2006. Of all environmental resources spent by UNDP during the period 2004-2006, about 28 per cent (\$262 million) was spent on frameworks and strategies for sustainable development, 28 per cent (\$263 million) on the conservation and sustainable use of biodiversity and 20 per cent (\$188 million) on access to sustainable energy services. These three areas accounted for three quarters of all UNDP spending on environment and energy. Smaller amounts were spent on effective water governance (\$108 million), controlling the emissions of ozone-depleting substances and persistent organic pollutants (\$67 million) and sustainable land management (\$49 million).

Frameworks and strategies for sustainable development

2. UNDP work under the category of "Frameworks and strategies for sustainable development" facilitates country-driven integration of environment sustainability into key national development frameworks, including poverty reduction strategies. A total of 84 countries were engaged in this service line in 2006, and 34 per cent of all environmental outcomes (96 of 282) reported by country offices were associated with this service line.

3. UNDP has been supporting capacity-building efforts to mainstream environment in national, regional and local-level development plans. Rwanda, for example, has worked to ensure that environment concerns are adequately reflected in its Economic Development and Poverty Reduction Strategy and District Development Plans, which involved training on environmental management tools, including strategic environmental assessment.

4. UNDP has a leadership role in developing strategic environmental assessment as an approach for mainstreaming environmental sustainability into policies, plans and programmes and co-led the preparation of the Organization for Economic Cooperation and Development/Development Assistance Committee (OECD/DAC) guidance on applying strategic environmental assessment. During the last few years, UNDP has increased its assistance to countries in applying strategic environmental assessment to improve the quality of their planning processes: UNDP supported 5 countries in this area in 2005 and 11 countries in 2006. Ghana used strategic environmental assessment processes to mainstream dryland development issues in district-level planning, and the Islamic Republic of Iran developed a national strategic environmental assessment framework that is being applied to its energy sector. UNDP is committed to a more systematic application of strategic environmental assessment both internally and in its partner countries.

5. A number of country offices have supported national sustainable development strategies. These efforts have focused on strengthening sustainable development strategies through analysing needs, developing capacities, enhancing national ownership and ensuring alignment with national programmes and priorities that contribute to the achievement of poverty reduction strategy paper goals and the implementation of various environmental conventions.

6. Countries do best when they adopt the principles of sustainable development and, whenever necessary, adapt these principles to national priorities. Significantly more countries are adapting Millennium Development Goal targets to national conditions and priorities and aligning them in their national development.

Water and sanitation

7. One area of UNDP's work is effective water governance, which entails incorporating water issues into national development frameworks, improving access of poor populations to adequate water supply and sanitation, and promoting transboundary dialogue on regional water issues. UNDP disbursed at least \$108 million in the area of water management during this period and the Global Environment Facility (GEF) alone funded international waters projects in scores of countries in 2006.

8. As regards national strategies for the equitable management and governance of water, UNDP has during the period 2004-2006 focused on integrating water resources management and water supply and sanitation into national development frameworks and building capacities for implementation. For example, UNDP assisted countries to develop national integrated water resources management (IWRM) strategies and continues to provide support in more than 50 other countries, including all small island developing States, for achieving the water-related Millennium Development Goals. Capacity development is priority and UNDP has established capacity-building networks such as Cap-Net, which comprises 11 national and 9 regional water management capacity-building networks, including 300 member institutions.

9. Regarding the local management of water supply, sanitation and water resources, UNDP has focused on promoting decentralized water management that is responsive to local conditions and the needs of poor and marginalized groups. UNDP has helped communities take an active role in integrated water resources management and promoted safe and ecosystem-based water supply and sanitation systems and technologies, including support to Chad, China, Kenya, the Sudan, Ukraine and others in conceiving national plans, tariff structures, legislation and regulatory systems for water and sanitation. UNDP supported community-level projects on water resources management, water supply and sanitation in over 30 countries. In India and Sri Lanka, the success of pilot projects in ecologically friendly sanitation elicited demands from municipal and State Governments to scale up sanitation services. A broad-based programme to implement "eco-friendly" municipal sanitation in Mexico has helped local organizations design and manufacture "ecosan" toilets and demonstrated the viability of successful household and public "ecosan" systems.

10. Gender equity and women's empowerment are central to water-resources management and, in this regard, foster human development for both women and

men. UNDP has produced tools such as "Mainstreaming gender in water management: a resource guide", an interactive web- and CD-ROM-based guide in four languages, and "Why gender matters", a tutorial for water managers, available in English and Spanish.

11. Adaptation to climate change is a cross-cutting area related to many others. During this period, UNDP supported the development of more than 200 individual national communications on climate change and adaptation, 29 national adaptation programmes of actions; and 22 pilot projects on adaptation in 43 countries, all of which have considerable relevance to water.

12. Finally, in the area of transboundary water management, UNDP continues to play an important role in strengthening the joint management of transboundary water bodies — rivers, lakes and aquifers that cross national borders — by setting priorities, building consensus on governance reforms and investments, nurturing and strengthening institutions, and supporting the implementation of action programmes. UNDP results here include support to transboundary waters management programmes in 15 lake and river basins in over 100 countries. Support includes the development and implementation of strategic action programmes and institutional development for transboundary water management.

Sustainable energy services

13. Sustainable energy services is a sector that has grown substantially in recent years with a focus on (a) strengthening national policy frameworks, (b) increasing rural energy access, (c) promoting clean technologies and (d) increasing access to investment financing for sustainable energy.

14. Since the Millennium Development Goals were adopted, over half of the Programme's energy-related projects and financing have dealt with expanding energy access to the poor. The main drivers of this growth are the Programme's three regional energy programmes, which aim to share lessons learned from national programmes and experiences and upscale country-level actions, while encouraging cooperative action through the consolidation of political commitments at the regional level. In Africa, for example, UNDP has been providing technical and financial support to the Economic Community of West African States (ECOWAS) in an effort to help mainstream energy considerations into the region's development strategies. With the help of UNDP, ECOWAS has committed to an ambitious regional scale-up strategy, setting itself the target of increasing access to modern energy services fourfold within rural and urban areas by 2015.

15. UNDP continues to play an important role in helping countries transition to more sustainable energy systems. The UNDP Global Environment Facility (GEF) programme is the major force in this area. The majority of UNDP/GEF projects deal with promoting more environmentally sustainable energy systems — through improved energy efficiency and adoption of renewable energy technologies — and addressing climate-related energy challenges. The Facility's Small Grants Programme also plays an important role, particularly with regard to building capacity at the community level for increasing energy access by the poor.

16. Increasing access to investment financing for sustainable energy remains a challenge. In this regard, UNDP is working with developing countries and

economies in transition to explore financing opportunities that would help them accelerate the transition to more sustainable energy systems. The MDG Carbon Facility, announced in December 2005, is the latest contribution of UNDP to this effort. Its objective is to bridge the gap between the world of carbon and the world of the Millennium Development Goals.

Sustainable land management

17. Sustainable land management covers the sustainability of agriculture, forest and rangelands, and aims to enhance the resilience and sustainability of livelihood of farmers, herders and other users of natural resources. The objective of UNDP work in this sector is to promote a change from standard "land management" to "sustainable land management". Decades of rural development have resulted in strategies that have skewed land-use patterns towards maximizing benefits in one sector while inadvertently creating costs in another sector. These costs have translated into land degradation, desertification, deforestation, excessive nutrient pollution and salinization, environmental refugees and forced migration, poverty and marginalization of minorities (indigenous peoples, pastoralists) and women in respect of local decision-making and control over land and natural resource assets. Rates of land degradation, depending on its severity, are estimated to have reached 10-30 per cent worldwide.

18. The UNDP Drylands Development Centre has developed capacities through the Integrated Drylands Development Programme resulting in the mainstreaming of drylands issues and priorities into national policies, development planning frameworks, poverty reduction strategies and budgetary systems in 19 countries in sub-Saharan Africa and the Arab States.

Conservation and sustainable use of biodiversity

19. The work of UNDP in the area of biodiversity has supported capacity development, knowledge management, policy advice and advocacy. A total of 53 UNDP country offices supported outcomes related to this area in 2006. Most conservation organizations are increasingly linking biodiversity conservation issues to human well-being and the Millennium Development Goals. Significant improvement has been made in the area of understanding and making the economic case for biodiversity and ecosystem service protection. Better methods for assessing and monitoring the state of global biodiversity and ecosystem services have been developed. Community perspectives on biodiversity conservation and sustainable use have had a notable impact on global and national policies.

20. Through global advocacy and analysis, the UNDP Biodiversity Global Programme has assisted developing countries and communities in influencing national and global policies, benefiting from knowledge on biodiversity, and advancing their sustainable development and poverty reduction goals. UNDP has also worked to help empower Governments and local communities with respect to better managing biodiversity and the ecosystem services that it provides. Global advocacy and analysis on behalf of local communities with respect to shaping the enabling environment have been achieved through the Equator Initiative, which awarded the Equator Prize in 2004 and 2006 in recognition of outstanding

community efforts to reduce poverty through the conservation of biodiversity. The Equator Initiative also set up and hosted six "community dialogue spaces" designed to: share local knowledge and learning among communities, non-governmental organizations and Governments; inform decision makers and policy processes; and develop the capacity of local leaders and communities in their efforts to achieve the Millennium Development Goals.

21. At the local community level, the Global Environment Facility Small Grants Programme has supported community-based approaches through grants of up to \$50,000. To date, more than 3,000 biodiversity-related projects of local non-governmental organizations and community-based organizations in over 80 countries have been funded, with funding totalling over \$58 million.

Control of ozone-depleting substance and persistent organic pollutants

22. Within this area, UNDP supports countries in developing national and sectoral policies to better control chemicals. A global initiative, the Strategic Approach to International Chemicals Management, has encouraged the incorporation of the sound management of chemicals into development planning processes. Given its cross-cutting nature, the sound management of chemicals is relevant in all sectors of society and contributes to the achievement of all the Millennium Development Goals, while weak management can impede their achievement. Under this service line, UNDP is working to help incorporate sound management of chemicals into national development planning processes by focusing on its cross-sectoral applications.

Climate change mitigation and adaptation

23. UNDP has also supported a significant amount of work related to climate change mitigation and adaptation. The Programme is the implementing agency for national adaptation programme of action projects in 30 least developed countries designed to develop country-wide programmes encompassing immediate and urgent adaptation activities for addressing the current and anticipated adverse effects of climate change and extreme events. Of the 30 countries, 7 (Bangladesh, Bhutan, Burundi, Kiribati, Malawi, the Niger and Samoa) have submitted their completed programme of action documents to the secretariat of the United Nations Framework Convention on Climate Change. Of those countries still preparing the programmes of action, six are expected to complete and submit them to the Convention secretariat in early 2007, while the remainder are expected to complete the process in 2008.

24. In 2006, UNDP supported 14 least developed countries in producing draft national adaptation programmes of action, increasing the number at or beyond the draft stage to 16. Follow-up programme of action projects in Bangladesh, Bhutan, Cambodia, the Niger and Samoa are currently in development. In Bhutan, glacial lake outburst risks are being reduced through (a) improving policies at national and provincial levels, (b) building capacities through flood early warning systems and (c) lowering lake water levels in high-risk areas. In 2007, UNDP will follow up with projects in another 10 least developed countries.

25. Also in 2006, 52 countries received approval for Second National Communication project proposals, supported by UNDP. Awareness of opportunities for integrating climate change risks into national development plans has grown through this process. Albania, for example, leveraged this process so as to develop a Global Environment Facility project proposal for integrating climate change risks in disaster planning and water management.

26. It is estimated that 40 per cent of development assistance could be affected by climate change. UNDP has been involved in climate change adaptation since the early 1990s when it helped develop the Adaptation Policy Framework to assist in translating vulnerability and adaptation studies into adaptation policies. In the context of the recently established Special Climate Change Fund and Least Developed Countries Fund managed by the Global Environment Facility and the recent allocations of official development assistance (ODA) and proceeds from the Clean Development Mechanism specifically for adaptation, the world community can make concerted efforts in terms of adapting to climate change.



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**Promotion and protection of human rights: human rights
situations and reports of special rapporteurs and representatives**

Protection of human rights and fundamental freedoms while countering terrorism

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, submitted in accordance with Commission on Human Rights resolution 2005/80, General Assembly resolution 61/171 and Human Rights Council resolution 5/1.

* A/62/150.



Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Summary

Section II of the present report highlights the general activities of the Special Rapporteur since 1 January 2007 and also includes a summary of the official country visits he conducted to South Africa in April 2007, the United States of America in May 2007 and Israel in July 2007. In section III, the Special Rapporteur reflects upon some of the challenges to refugee law and asylum caused by global measures to counter terrorism. He examines issues such as pre-entry interception and screening measures related to border control; detention of asylum-seekers and shortcomings in securing court review of such detention; exclusion from refugee or other protection status; the application and non-derogability of the principle of non-refoulement; the return, repatriation or resettlement of rejected asylum-seekers, including persons detained for terrorism-related reasons; the use of so-called diplomatic assurances; and strengthening global responsibility for international protection as an inherent part of a comprehensive counter-terrorism strategy. The conclusions and recommendations are contained in section IV and include a number of specific recommendations to States regarding pre-entry and screening measures, compliance with international standards regarding detention of asylum-seekers, the obligation of non-derogation in respect of the principle of non-refoulement and States' responsibilities regarding release, repatriation and resettlement of detainees held for terrorism-related reasons.

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I. Introduction

1. This report is the third submitted to the General Assembly by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. It is submitted pursuant to Commission on Human Rights resolution 2005/80,¹ General Assembly resolution 61/171 and Human Rights Council resolution 5/1.² It highlights his general activities from 1 January to 31 July 2007 and includes a summary of his official country visits to South Africa, the United States of America and Israel and a thematic discussion on the challenges to refugee law in the fight against terrorism.³

2. The Special Rapporteur draws attention to the report (A/HRC/4/26 and Add.1-3) he submitted to the Human Rights Council at its fourth session, in March 2007. The main report summarized the Special Rapporteur's activities in 2006 and focused on two thematic issues. Firstly, he studied the compliance of "terrorist profiling" practices with international human rights standards, as well as alternatives to the reliance on "terrorist profiles". Secondly, he examined the issue of suicide attacks as a specific form of terrorism and a specific challenge for responses that respect human rights, by providing a survey of the existing research and analysis on this phenomenon. In the context of suicide terrorism, he also addressed the issue of "shoot-to-kill" policies and other similar attempts to evade existing international standards on the use of firearms by law enforcement officials.

3. Document A/HRC/4/26/Add.1 contained a summary of the press releases issued and communications sent by the Special Rapporteur to Governments and the replies of Governments during 2006 regarding counter-terrorism issues such as current or draft legislation, as well as individual cases of persons detained, arrested or imprisoned for terrorism-related offences; A/HRC/4/26/Add.2 contained the final report of the fact-finding mission that the Special Rapporteur undertook to Turkey from 16 to 23 February 2006; A/HRC/4/26/Add.3 was a desktop study on human rights and counter-terrorism in Australia.

II. Activities

A. General

4. The Special Rapporteur, in accordance with his mandate, undertook a number of activities from 1 January to 31 July 2007. These are described below.

5. On 18 January 2007 the Special Rapporteur gave a keynote address entitled "Terrorism and counter-terrorism: the impact on human rights protection" at the launching event of the International Human Rights Obligations Network (IntHRON) at Lancaster University in the United Kingdom.

¹ See *Official Records of the Economic and Social Council, 2005 and corrigenda, Supplement No. 3* (E/2005/23 and corrigenda), chap. II, sect. A.

² See A/HRC/5/21, chap. I, sect. A.

³ The Special Rapporteur recognizes the contribution by his academic research assistant, Kristina Stenman of Åbo Akademi University, Finland, as well as the assistance of the Office of the High Commissioner for Human Rights in producing the present report.

6. From 19 to 21 January 2007 the Special Rapporteur attended a conference at Wilton Park outside London focusing on United Nations human rights reform, including the future of the special procedures of the Human Rights Council.
7. On 31 January and 1 February 2007 the Special Rapporteur attended the sixth session of the Working Group of Experts on People of African Descent and its panel on racial profiling in Geneva and gave a presentation on profiling in the context of counter-terrorism.
8. On 8 February 2007 the Special Rapporteur gave a keynote speech entitled "Human rights and the fight against terrorism: challenges and opportunities" at the University of East London Centre on Human Rights in Conflict. On 9 February he held consultations with the international secretariat and several research teams at Amnesty International headquarters in London.
9. On 12 and 13 February 2007 the Special Rapporteur was in Geneva where he met with representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Commission of Jurists. He also participated in a meeting of the Human Rights Council Intergovernmental Working Group on the Review of Mandates.
10. On 15 and 16 March 2007 the Special Rapporteur visited Turin, Italy, to participate in a meeting of the Counter-Terrorism Implementation Task Force. He provided input to ensure that the human rights dimension is included in the workplans and project documents being prepared by various working groups that have been formed to implement the United Nations Global Counter-Terrorism Strategy adopted by the General Assembly in resolution 60/288 of 8 September 2006. The Special Rapporteur continues to participate in the work of the Task Force and its various working groups in accordance with his mandate, which requires him to develop a regular dialogue and discuss possible areas of cooperation with all relevant actors, relevant United Nations bodies, specialized agencies and programmes, including the Counter-Terrorism Committee of the Security Council and the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime.
11. On 16 and 17 March 2007 the Special Rapporteur was represented at a meeting convened in London by Interights on strategic litigation for lawyers working on issues related to renditions, torture, arbitrariness and impunity.
12. On 19 March 2007 the Special Rapporteur made a presentation to the Subcommittee on Human Rights of the European Parliament in Brussels and participated in a discussion on the alleged use of European countries by the United States Central Intelligence Agency for the transportation and illegal detention of prisoners.
13. From 20 to 26 March 2007 the Special Rapporteur was in Geneva to present his report to the fourth session of the Human Rights Council. He also had high-level meetings with representatives of the Permanent Missions to the United Nations Office at Geneva of Cuba, Israel, the Philippines, South Africa, Spain and the United States of America. He also met with various non-governmental organizations (NGOs) and gave presentations at two NGO events on issues related to his mandate. He had a meeting with legal advisers to the International Committee of the Red Cross. He also participated in a meeting regarding a fact sheet on human rights and

counter-terrorism being prepared by the Office of the High Commissioner for Human Rights.

14. On 10 April 2007 the Special Rapporteur sent a letter to the Executive Directorate of the Counter-Terrorism Committee in response to a written request by the Committee concerning its visit to Turkey in May 2007. The Special Rapporteur identified several human rights issues that merited further examination, such as the anti-terrorism legislation, the right to a fair trial and compensation for victims of terrorism. The Special Rapporteur hoped that the input provided would help start a dialogue with the Committee on future cooperation regarding country visits.
15. On 11 and 12 April 2007 the Special Rapporteur participated in an expert seminar, "Counter-terrorism strategies, human rights and international law: meeting the challenges", and gave a presentation at the session on assessing and positioning various forms of international terrorism. The event was hosted by the Grotius Centre for International Legal Studies of Leiden University, the Netherlands.
16. On 17 and 19 April 2007, while on an official country visit to South Africa, the Special Rapporteur gave two public lectures on human rights and counter-terrorism at Pretoria University and at the Institute for Security Studies in Pretoria.
17. From 2 to 4 May 2007 the Special Rapporteur visited Lund, Sweden, and participated in a workshop entitled "Human rights special procedures: the institution of the special rapporteur".
18. On 15 May 2007, in response to a request by the European Commission against Racism and Intolerance of the Council of Europe, the Special Rapporteur submitted comments on the issue of profiling in regard to a draft general policy recommendation on policing and profiling without discrimination. This policy was subsequently adopted during the Commission's plenary meeting in June 2007.
19. On 17 May 2007 the Special Rapporteur met with the Executive Secretary of the Inter-American Commission on Human Rights in Washington, D.C., to engage in a dialogue on human rights while countering terrorism and to discuss areas of possible cooperation regarding human rights and counter-terrorism.
20. On 17 and 18 May 2007 the Special Rapporteur was represented at the Symposium on Advancing the Implementation of the United Nations Global Counter-Terrorism Strategy in Vienna. The Symposium discussed implementation of the Strategy, including measures to address conditions conducive to terrorism and the promotion and protection of human rights which could also serve to strengthen the application of international criminal law and judicial cooperation.
21. On 31 May 2007 the Special Rapporteur participated in an expert panel on the "war on terror" at the Washington College of Law of the American University in Washington, D.C.
22. From 18 to 21 June 2007 the Special Rapporteur attended the fourteenth annual meeting of the special procedures of the Human Rights Council, held in Geneva, where participants primarily discussed issues arising from the Council's institution-building process. The Special Rapporteur held discussions with high-level representatives of the Permanent Missions to the United Nations Office at Geneva of Israel, South Africa and the United States of America. He also met with the respective ambassadors heading the Permanent Observer Mission of Palestine and the Permanent Delegation of the Organization of the Islamic Conference.

23. On 20 June 2007 the Special Rapporteur and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment gave a briefing to the Director of the Department of International Protection of UNHCR in Geneva in relation to the human rights of refugees in the context of countering terrorism.

24. On 20 June 2007 the Special Rapporteur gave a keynote address at a workshop on human rights and implementation of the United Nations Global Counter-Terrorism Strategy organized by the Centre on Global Counter-Terrorism Cooperation and the Graduate Institute of International Studies in Geneva. On 21 June he participated in a public panel discussion at the Institute that concluded the workshop.

25. Also on 20 July 2007 the Special Rapporteur met with members of the Human Rights Committee in Geneva and gave a briefing on his country visits and other country-specific work. He also briefed the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories.

B. Country visits

26. The Special Rapporteur undertook three missions during the reporting period. The mission reports will be submitted to the Human Rights Council at a future session. The following paragraphs contain a summary of some of the Special Rapporteur's main preliminary observations that were reflected in a press statement issued during a press conference held at the conclusion of each country visit.

27. From 16 to 26 April 2007 the Special Rapporteur conducted an official mission to South Africa. On 26 April he issued a press release⁴ noting that, in the context of emerging from apartheid rule, the term "terrorism" had been associated with widespread and systematic human rights violations by the previous regime. The Special Rapporteur identified some aspects of the Protection of Constitutional Democracy against Terrorist and Related Activities Act (2005) as examples of good practice, but also expressed concern about certain elements of the legislation, including concerns about an overly broad list of crimes that may be treated as terrorist activity, protection of freedom of expression, and lack of clarity about the nature and scope of parliamentary action against persons listed by the Security Council and about the form and scope of potential judicial review. He drew attention to allegations of police brutality, community violence against certain foreigners and a concern about provisions in the law relating to the detention of foreigners and the implications of those provisions in the context of counter-terrorism. He observed that foreigners could be detained for security-related reasons without trial, and that there was no independent monitoring agency conducting visits to the police stations where they might be held. The Special Rapporteur highlighted that South Africa played a key regional role and encouraged the Government to take the lead in ensuring the development of laws on counter-terrorism that were in conformity with international human rights standards.

⁴ See full text of press statement at www.unhcr.ch/hurricane/hurricane.nsf/view01/2972818321758A90C12572C900476EA5?opendocument.

28. From 16 to 25 May 2007 the Special Rapporteur conducted an official mission to the United States of America. On 25 May he issued a press release⁵ wherein he expressed his view that the United States, as a world leader, had a special responsibility in the protection of human rights while countering terrorism. He outlined the international public law framework, including the application of international human rights law during armed conflict, and that of the extraterritorial application of international human rights law. The Special Rapporteur expressed grave concern about the situation of detainees held at Guantánamo Bay and detainees held in other locations, and the lack of judicial guarantees and fair trial procedures afforded to individuals suspected of terrorist activity, as well as the transfer of terrorist suspects. He drew attention to several problems related to the use of military commissions to try terrorist suspects, including jurisdictional and evidentiary issues, as well as issues regarding the independence and impartiality of the commissions and their potential use to try civilians. The Special Rapporteur also expressed concern about the interrogation of terrorist suspects. He addressed the issue of "extraordinary rendition" of terrorist suspects and their detention in "classified locations", and the accountability of those responsible for conducting interrogations using techniques amounting to torture or cruel, inhuman or degrading treatment. The Special Rapporteur also noted other issues such as national definitions of terrorism, the alleged targeted killings of terrorist suspects by United States agents, the provision of compensation to victims of terrorism, profiling, community outreach, the effect of counter-terrorism measures on immigration and refugee status and the impact of surveillance on the right to privacy.

29. From 3 to 10 July 2007 the Special Rapporteur conducted an official mission to Israel; he also visited the Occupied Palestinian Territory. On 10 July he issued a press release⁶ in which he encouraged the Government of Israel to reconsider its derogation from aspects of the International Covenant on Civil and Political Rights under a declared state of emergency and welcomed the invitation extended to him to provide comments on a future draft law on counter-terrorism. The Special Rapporteur also examined the route and the effect of the barrier (wall/fence) being built by the Government of Israel. He consulted with the Government and non-governmental agencies in Israel and the Occupied Palestinian Territory to assess the effectiveness of the barrier in combating terrorism and its impact on all human rights, and in particular the economic, social and cultural rights of the Palestinian people. He also expressed concerns regarding the Government's practice of targeted killings and the interrogation techniques used by the Israeli security agency. Other issues that the Special Rapporteur will examine in the mission report are the definition of terrorism, the detention of security suspects, administrative detention and military courts, the use of human shields and the rights of victims of terrorism.

⁵ See full text of press statement at www.unhcr.ch/hurricane/hurricane.nsf/view01/15B4F3535CE9EB5FC12572E600569287?opendocument.

⁶ See full text of press statement at www.unhcr.ch/hurricane/hurricane.nsf/view01/75D990D98804F51FC12573140049A174?opendocument.

III. Challenges to refugee protection posed by counter-terrorism measures

A. Background

30. The Special Rapporteur wishes in the present report to focus on the impact of counter-terrorism measures on the international refugee protection regime and the right to seek asylum. He is mindful of the difficult security challenges posed by the threat of terrorist acts. He underlines, however, that States in international human rights treaties and other instruments, including the United Nations Global Counter-Terrorism Strategy and its plan of action, have clearly reiterated their obligation to respect and ensure the right to seek and to enjoy in other countries asylum from persecution, enshrined in article 14 of the Universal Declaration of Human Rights. In the plan of action for the strategy, States resolve:

To recognize that international cooperation and any measures that we undertake to prevent and combat terrorism must comply with our obligations under international law, including the Charter of the United Nations and relevant international conventions and protocols, in particular human rights law, refugee law and international humanitarian law.⁷

31. Immigration control policies of States are part and parcel of the international system of protecting individuals from their forcible return to States where they may face persecution, torture or other inhuman treatment, or gross or protracted, systemic human rights violations. The Special Rapporteur wishes particularly to underline this point in the context of counter-terrorism.

32. Many issues which the Special Rapporteur has focused on in his previous reports relate to challenges facing foreigners, including immigrants and refugees, in their enjoyment of human rights. This pertains, for instance, to the issue of profiling in the context of counter-terrorism, which the Special Rapporteur addressed in his report (A/HRC/4/26) to the Human Rights Council at its fourth session. In the present report, he highlights certain issues that have a particular bearing on the possibility of individuals to access protection and determination by States of their need for international protection. These issues are: pre-entry interception and screening measures; detention of asylum-seekers; exclusion from refugee or other protection status, including in relation to the application of the principle of non-refoulement; the conditions of returned and rejected asylum-seekers; repatriation or resettlement of persons detained for terrorism-related reasons; and strengthening global responsibility for international protection. These are concerns which the Special Rapporteur has also encountered in his engagement with individual States, for example during his country visits to Turkey (see A/HRC/4/26/Add.2), South Africa, the United States of America and Israel, and his desktop study on Australia (see A/HRC/4/26/Add.3), and in exchanges with regional organizations such as the Council of Europe.

33. The Special Rapporteur in this context wishes to draw attention to the mandate and responsibility of UNHCR as the primary body in the United Nations structure in charge of the international protection of refugees and of supervising adherence to the 1951 Convention relating to the Status of Refugees (hereinafter the 1951

⁷ General Assembly resolution 60/288, annex, para. 3.

Refugee Convention). Refugee law, in the Special Rapporteur's view, can be seen as constituting one branch of human rights law. General human rights instruments, in turn, contain many provisions that complement the 1951 Refugee Convention and the rights expressed therein. In the field of counter-terrorism, many of the challenges to human rights are so directly linked to asylum-seekers, refugees and immigrants that the impact of counter-terrorism measures on the international protection regime and the right to seek and enjoy asylum from persecution must also be seen as being at the core of the mandate of the Special Rapporteur.

34. In the international measures to counter terrorism, unwarranted linkages between refugee protection and terrorism threats were made evident soon after the atrocious terrorist attacks of 11 September 2001. In resolution 1373 (2001) the Security Council called upon States to ensure that they would not provide safe havens for terrorists, and to take measures to ensure that terrorists were not granted asylum and to prevent the abuse of refugee protection by perpetrators of terrorist acts.⁸ Similarly, in the plan of action for the Strategy, States resolve not to grant safe haven to terrorists and resolve to take appropriate measures to ensure that asylum is not granted to terrorists.⁹

35. In dismissing unwarranted linkages between refugee protection and terrorism the Special Rapporteur emphasizes the humanitarian, civilian and non-political character of asylum and the many safeguards of the institution of asylum, such as the identification and exclusion of persons in respect of whom there are serious reasons for considering that they have committed heinous acts or serious crimes which render them undeserving of international protection. In the same vein, it should be recalled that refugee status does not shield a person against criminal prosecution, extradition or expulsion in accordance with due process and pursuant to articles 32 and 33 (2) of the 1951 Refugee Convention.

B. Pre-entry interception and screening measures

36. Being able to access another State to seek protection is a cornerstone of the international refugee protection regime.¹⁰ At the same time, increased border security is one important aspect of States' measures to counter terrorism.¹¹ In the framework of international cooperation to counter terrorism, maritime interception operations by the United States and its allies have taken place, for example, off the Horn of Africa as part of Operation Enduring Freedom, and in the Mediterranean by the North Atlantic Treaty Organization within Operation Active Endeavour. While such actions have primarily been targeted at intercepting vessels suspected of

⁸ See para. 3 (f) and (g).

⁹ General Assembly resolution 60/288, annex, sect. II, paras. 2 and 3.

¹⁰ See UNHCR Executive Committee Conclusion on International Protection Nos. 6 (XXVIII), 85 (XLIX) and 99 (LV) which reaffirm the fundamental importance of the observance of the principle of non-refoulement, both at the border and within the territory of a State, of persons who may be subjected to persecution if returned to their country of origin irrespective of whether or not they have been formally recognized as refugees, and stressed that the principle of non-refoulement and non-rejection at the frontier requires access to fair and efficient procedures for determining status and protection needs.

¹¹ For instance, the Counter-Terrorism Committee is scheduled to hold its fifth special meeting with specialized and regional organizations on the theme "Prevention of terrorist movement and effective border security" in Nairobi from 29 to 31 October 2007. See www.un.org/sc/ctc/.

carrying terrorists or weapons to be used in terrorist acts, prevention of all illegal activities, such as human trafficking or illegal immigration, has also been one aspect of these operations, which in turn may have a spillover effect on genuine asylum-seekers.¹²

37. This development is not related only to counter-terrorism measures, but has been a part of developing immigration control policies since the 1980s. Concern over such interception practices have been voiced by UNHCR, among others, over the years.¹³ The Special Rapporteur welcomes the UNHCR position advocating for protection-sensitive entry systems.¹⁴ Other aspects of immigration control which have been evolving strongly over the last two decades and have gained increased momentum as examples of reportedly useful counter-terrorism measures are increased attention to travel document security and exchange of passenger and immigration data.

38. While the Special Rapporteur recognizes the need for increased border security as part of an effective counter-terrorism strategy, he is concerned that few concrete measures are taken to compensate for the increasing difficulties that persons encounter and must overcome in order to access protection. For persons seeking international protection, their only means of leaving their home country and accessing another State to seek protection is often the use of fraudulent travel documents and resorting to the assistance of smugglers. The principle of not penalizing the asylum-seeker for illegal entry is also recognized in article 31 of the 1951 Refugee Convention.¹⁵ Increasing border control and pre-screening measures without adequately addressing the difficulties encountered by persons seeking protection will undermine the global regime of refugee protection and human rights, inter alia the protection against refoulement.

39. The Special Rapporteur identifies a need for closer cooperation between States and UNHCR to counteract the negative effects of pre-entry immigration control measures and interception operations while at the same time remaining vigilant in respect of the threat of terrorism.

C. Detention of asylum-seekers

40. The right to liberty and security of the person, as guaranteed by article 9 of the International Covenant on Civil and Political Rights, is an ongoing concern for the Special Rapporteur in carrying out his mandate. Some States in their counter-terrorism measures have sought to circumvent their obligations in this respect and

¹² Factsheet of the Common Joint Task Force-Horn of Africa available at www.hoa.centcom.mil/facts.htm. On the mandate and activities of Operation Active Endeavour, see www.afsouth.nato.int/JFCN_Operations/ActiveEndeavour/Endeavour.htm. See also Maria Sanminiatielli, "NATO says Mediterranean patrols deter terrorism", Associated Press, 18 December 2006.

¹³ See e.g. UNHCR, *State of the World's Refugees 2000*, chapter 7 — Asylum in the industrialized world, box 7.4 Haitian asylum-seekers, at <http://www.unhcr.org/publ/PUBL/3ebf9bb10.pdf>; UNHCR, *State of the World's Refugees 2006*, chapter 2 — Safeguarding asylum, box 2.3 The Tampa Affair: interception and rescue at sea, at <http://www.unhcr.org/publ/PUBL/4444d3c320.html>.

¹⁴ See Refugee Protection and Mixed Migration: A 10-Point Plan of Action, UNHCR, January 2007.

¹⁵ See article 31 (1) and (2) of the 1951 Convention relating to the Status of Refugees regarding obligations of the Contracting States in relation to refugees unlawfully in the country of refuge.

have introduced special provisions relating to persons suspected of terrorist acts that allow for lengthy or even indeterminate periods of detention without proper legal safeguards.

41. Apart from special provisions related to detention of terrorism suspects, most States' immigration legislation contains provisions for the detention of foreigners, including asylum-seekers. In many countries with which the Special Rapporteur has engaged, it appears that as one measure to counter terrorism, such detentions are increasing or taking new forms that may lack the safeguards required by international human rights standards. The administrative detention of foreigners, including asylum-seekers, raises issues related to the necessity and proportionality of such measures, the right to speedy and effective court review of any form of detention, the rights of detained persons including their right to the best attainable health, and possible violations of the prohibition against discrimination. Detention, particularly over protracted or even indefinite periods, has in numerous studies been found to affect adversely the mental health and well-being of detainees.¹⁶ Conditions of isolation, often in remote locations, in detention centres or prisons may also heighten the risk of detainees being subject to abuse or violence, in contravention of articles 7 and 10 of the International Covenant on Civil and Political Rights.

42. Article 9 of the International Covenant on Civil and Political Rights and other instruments of human rights and refugee law do allow for the administrative detention of immigrants in certain circumstances. However, the Human Rights Committee, in the case of *A v. Australia* (communication No. 560/1993), inter alia, has considered that in order to avoid being characterized as arbitrary, detention should not continue beyond the period for which there is appropriate justification.¹⁷

43. Two scenarios can be discerned in detention on the basis of immigration regulations: either existing immigration legislation is used to detain individuals seemingly on grounds related to immigration controls, or special detention regimes are introduced based on terrorism-related security concerns.

44. In Australia, on which the Special Rapporteur conducted a desktop study in 2006, the Migration Act 1958 allows for the indefinite detention of a person who is to be deported from Australia. The Australian Refugee Council reported that, on 31 December 2004, of those in immigration detention more than 200 persons had been held in detention for longer than 24 months. The Special Rapporteur in his study on Australia expressed his grave concern over the unlimited length of detention under the Migration Act.

45. In South Africa, where the Special Rapporteur conducted an official visit in April 2007,¹⁸ the 2002 Immigration Act allows for detention of deportable immigrants, without any mandatory judicial review until 30 days of detention have elapsed. In security-related cases, it also transpires that detainees are often held in

¹⁶ See e.g. Carmen Lawrence, "Mental illness in detained asylum seekers", *The Lancet*, vol. 364, Issue 9441, 2 October 2004, pp. 1283-1284.

¹⁷ *Official Records of the General Assembly, Fifty-second session, Supplement No. 40 (A/52/40)*, vol. II, annex VI, sect. L, para. 9.4.

¹⁸ The mission report on South Africa is expected to be considered at a future session of the Human Rights Council.

police stations, where there is no oversight on a regular basis by any independent monitoring agency.

46. An example of a specific, security-related detention regime is Operation Liberty Shield, which the United States of America introduced at the beginning of the Iraq invasion. The policy was operational during March and April 2003, and was then quietly dismantled. The onset of the policy was a result of an internal security analysis according to which the risk of terrorist attacks against United States interests was heightened during that time. While the Operation had many different components, from food security to escorts of vessels, the most obvious implication for foreigners was the automatic detention of asylum-seekers from certain countries of origin for the duration of the asylum procedure, including countries where Al-Qaida operated or where Al-Qaida supporters were known to dwell. According to non-governmental sources, the countries of origin included Afghanistan, Algeria, Bahrain, Bangladesh, Djibouti, Egypt, Eritrea, Indonesia, Iran (Islamic Republic of), Jordan, Kazakhstan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Malaysia, Morocco, Oman, Pakistan, Philippines, Qatar, Saudi Arabia, Somalia, Sudan, Syrian Arab Republic, Thailand, Tajikistan, Tunisia, Turkey, Turkmenistan, United Arab Emirates, Uzbekistan and Yemen, as well as Gaza and the West Bank.¹⁹ The Special Rapporteur notes that such detention regimes, based sweepingly on the country of origin of asylum-seekers, clearly risk violating the prohibition against discrimination.

47. Another example from the United States of America, where the Special Rapporteur conducted an official visit in May 2007,²⁰ relates to the risk that increased attention to security concerns in relation to asylum and immigration may generally lead to an atmosphere in which detention of immigrants and asylum-seekers and other restrictive measures are more broadly accepted. This kind of approach is reflected in United States Attorney-General Ashcroft's decision in *Matter of D-J* in 2003. It concerned the possibility of bail from detention for an 18-year-old Haitian asylum-seeker. The Attorney-General stated:

I conclude that releasing respondent, or similarly situated undocumented seagoing migrants, on bond would give rise to adverse consequences for national security and sound immigration policy. As demonstrated by the declarations of the concerned national security agencies submitted by [the Immigration and Naturalization Service], there is a substantial prospect that the release of such aliens into the United States would come to the attention of others in Haiti and encourage future surges in illegal migration by sea. Encouraging such unlawful mass migrations is inconsistent with sound immigration policy and important national security interests. As substantiated by the government declarations, surges in such illegal migration by sea injure national security by diverting valuable Coast Guard and [Department of Defense] resources from counterterrorism and homeland security responsibilities. Such national security considerations clearly constitute a "reasonable foundation" for the exercise of my discretion to deny release on

¹⁹ Lawyers Committee for Human Rights (now Human Rights First), *Assessing the New Normal: Liberty and Security for the Post-September 11 United States*, 2003, pp. 41-42 at www.humanrightsfirst.org/pubs/descriptions/Assessing/AssessingtheNewNormal.pdf.

²⁰ The mission report on the United States of America is expected to be considered at a future session of the Human Rights Council.

bond under section 236(a). See *Carlson*, 342 U.S. at 534; *Barbour*, 491 F.2d at 578.²¹

48. In the light of alarming signals from various parts of the world that well-established international standards concerning the deprivation of liberty of immigrants or asylum-seekers are being eroded in the name of fighting terrorism, the Special Rapporteur wishes to remind States of their obligations under international law, primarily by reference to article 9 of the International Covenant on Civil and Political Rights.

D. The principle of non-refoulement

49. The principle of non-refoulement, i.e. the prohibition against sending an individual back to a situation where he or she may experience a threat to his or her life or freedom, or risk being subjected to persecution, torture or any other form of cruel, inhuman or degrading treatment or punishment is well established in human rights treaties, including the 1951 Refugee Convention, and is to be considered a part of international customary law. The prohibition of refoulement under international refugee law is applicable to any form of forcible removal, including deportation, expulsion, extradition, informal transfer or "rendition", and non-admission at the border.²² Article 33 (2) of the 1951 Refugee Convention contains a limited possibility for exception on the basis of very serious security concerns of the asylum State, whereas the principle as set out in article 7 of the International Covenant on Civil and Political Rights and article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is unconditional.

50. One of the most serious challenges to human rights in the years following 2001 has been the questioning by many States of the principle of non-refoulement. Even in Europe, where this principle has long been well established in the case law of the European Court of Human Rights on the basis of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), it was called into question. The Commission of the European Union suggested in its Working Document soon after the attacks of September 2001 a possible future need for the Court to review its position:

The European Court of Human Rights has repeatedly affirmed that the European Convention on Human Rights, even in the most difficult circumstances, such as the fight against terrorism and organized crime, prohibits, in absolute terms, torture and inhuman or degrading treatment or punishment. The European Court of Human Rights has emphasized that, unlike most of the substantive clauses of that particular Convention, Article 3 makes no provision for exceptions and no derogation from it is permissible even in the event of a public emergency threatening the life of the nation. Following the 11 September events, the European Court of Human Rights may in the future again have to rule on questions relating to the interpretation of Article 3,

²¹ www.usdoj.gov/eoir/efoia/bia/Decisions/Revdec/pdfDEC/3488.pdf.

²² UNHCR, Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1976 Protocol, 26 January 2007, para. 7. See also UNHCR, Note on Diplomatic Assurances and International Refugee Protection, August 2006, at www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=44dc81164.

in particular on the question in how far there can be a “balancing act” between the protection needs of the individual, set off against the security interests of a state.²³

51. In some recent cases before the European Court of Human Rights related to article 3 of the European Convention on Human Rights, the Governments of Italy, Lithuania, Portugal, Slovakia and the United Kingdom of Great Britain and Northern Ireland have been granted the right to intervene as third parties.²⁴ The Special Rapporteur finds it extremely worrying that these Governments appear to be seeking to weaken the Court’s established case law relating to the principle of non-refoulement.²⁵

52. An issue related to non-refoulement, which has frequently arisen in relation to deportations of persons allegedly linked to terrorism is that of States seeking diplomatic assurances against torture and other forms of inhuman treatment or punishment from States receiving a deported person. The Special Rapporteur draws attention to the findings of human rights treaty bodies in two related cases: *Agiza v. Sweden* by the Committee against Torture and *Alzery v. Sweden* by the Human Rights Committee. In both cases, a violation was found, respectively, of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and of article 7 of the International Covenant on Civil and Political Rights, despite diplomatic assurances received by Sweden from Egypt that Mr. Agiza and Mr. Alzery would not be subjected to torture or other inhuman treatment or punishment upon return to Egypt.²⁶

53. The Special Rapporteur also notes that States have sought to carry out security-related deportations of persons with little or no possibility for them to challenge such deportations before an independent and impartial body. He underlines that, despite the exception clause on security grounds set out in article 13 of the International Covenant on Civil and Political Rights, the Human Rights Committee has clearly stated that the possibility for such review of deportation decisions is an inherent part of article 7 of the Covenant. The Committee’s view, expressed in *Ahani v. Canada*,²⁷ was reiterated in the *Alzery* case.²⁸ The Special

²³ Commission of the European Union, Commission Working Document, “The relationship between safeguarding internal security and complying with international protection obligations and instruments”, COM (2001) 743 final, 5 December 2001, para. 2.3.1, p. 14 at http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001_0743en01.pdf.

²⁴ European Court of Human Rights, press release issued by the Registrar, application lodged with the Court, *Ramzy v. the Netherlands*, 20 October 2005.

²⁵ Amnesty International, UK intervenes in European Court to support deportation despite torture risk, 11 July 2007 at www.amnesty.org.uk/news_details.asp?NewsID=17409.

²⁶ Committee against Torture, *Agiza v. Sweden*, communication No. 233/2003, *Official Records of the General Assembly, Sixtieth Session, Supplement No. 44 (A/60/44)*, annex VIII, sect. A; and Human Rights Committee, *Alzery v. Sweden*, communication No. 1416/2005.

²⁷ *Ahani v. Canada*, communication No. 1051/2002, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40 (A/59/40)*, vol. II, annex IX, sect. BB. See, in particular, paras. 10.6-10.8.

²⁸ See paragraph 11.8 of the Committee’s views in *Alzery*: “As to the claim concerning the absence of independent review of the Cabinet’s decision to expel, given the presence of an arguable risk of torture, the Committee notes that article 2 of the Covenant, read in conjunction with article 7, requires an effective remedy for violations of the latter provision. By the nature of refoulement, effective review of a decision to expel to an arguable risk of torture must have an opportunity to take place prior to expulsion, in order to avoid irreparable harm to the individual and rendering

Rapporteur therefore strongly advises States against the use of accelerated procedures in asylum cases and deportation procedures if such procedures do not include an effective, independent and impartial remedy operative before the execution of a removal decision. In the assessment of the Special Rapporteur, any other than a judicial remedy is unlikely to meet the demanding requirements of human rights law, as spelled out in the *Agiza*, *Ahani* and *Alzery* cases by United Nations human rights treaty bodies.

E. Release, repatriation and resettlement of detainees held for terrorism-related reasons

54. As a result of counter-terrorism measures undertaken by certain States, including the United States of America, individuals have been captured, detained, including being held in unacknowledged locations, and subjected to extraordinary rendition involving practices of proxy detention in unacceptable and non-monitored conditions. This may have even resulted in long-term situations of detention, particularly for persons apprehended in Afghanistan and Iraq. The Special Rapporteur is encouraged by positive signals he received during his official visit to the United States of America of the Government's plans to close down one of the most long-standing places of detention of terrorism suspects, the military detention facility at Guantánamo Bay.

55. The Special Rapporteur, in principle, supports initiatives to return security detainees to their countries of origin when suspicions of terrorism do not result in prosecution and conviction. He wishes, however, to underline that the individual situation of each detainee must be carefully assessed, and that some individuals may have a well-founded claim to international protection. He further emphasizes States' obligations in such situations to fully comply with the standards set in international law, including full respect of the principle of non-refoulement. This includes respect for the threshold set out, primarily by article 7 of the International Covenant on Civil and Political Rights, that no return must take place to a country where a "real risk" of torture or any form of cruel, inhuman or degrading treatment or punishment exists. He underlines that, for example, a threshold of non-return only where it is "more likely than not" that a person will be subject to "torture" (as defined by national law) is not in compliance with international law.

56. The Special Rapporteur underlines the absolute (non-derogable) nature of the protections of article 7 of the International Covenant on Civil and Political Rights and article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Hence, suspicions of a person's involvement in terrorist activities, including being put on a terrorist list by a national Government or even by the Security Council, do not alter the detaining State's obligations under the principle of non-refoulement.

57. The Special Rapporteur further underlines that diplomatic assurances sought from a receiving State to the effect that a person will not be subjected to torture or

the review otiose and devoid of meaning. The absence of any opportunity for effective, independent review of the decision to expel in the author's case accordingly amounted to a breach of article 7, read in conjunction with article 2 of the Covenant." See also paragraph 13.8 of the *Agiza* case.

any other form of cruel, inhuman or degrading treatment or punishment do not absolve the duty of the sending State to assess individually the existence of a "real risk" of such treatment. The same obligation to conduct an individual assessment exists also in relation to the risk of persecution or the risk of capital punishment in contradiction with article 6 (right to life) or article 14 (right to a fair trial) of the International Covenant on Civil and Political Rights, or for countries that themselves have abolished capital punishment.

58. In the view of the Special Rapporteur diplomatic assurances can, at best, be taken into account as one of the several factors to be addressed in the individual assessment of the risk. Furthermore, such assessment must be subject to effective and independent, preferably judicial, safeguards. Mindful of the fact that diplomatic assurances against torture or inhuman treatment, even when accompanied by post-removal monitoring, tend not to work in practice, the Special Rapporteur discourages the creation of removal or resettlement mechanisms where such assurances would play a central role.

59. The Special Rapporteur emphasizes that even in situations of released detainees, the principle of non-refoulement is applicable where a person is liable to the imposition of the death penalty in a jurisdiction where the standards of trial fall short of rigorous compliance with article 14 of the International Covenant on Civil and Political Rights on the right to a fair trial.²⁹ Furthermore, countries that themselves have abolished capital punishment may in no circumstances return a person to another country where he or she would face a real risk of being sentenced to death or executed.³⁰

60. The Special Rapporteur is aware that some countries have expressed their readiness in principle to receive persons who would be resettled from Guantánamo Bay. The Special Rapporteur emphasizes that the United States of America has the primary responsibility to find solutions for any individuals among those detained in Guantánamo Bay who are in need of international protection. To enable such a process the Government of the United States must fully cooperate with UNHCR so that the Office is able to fulfil its mandate and, if required, conduct confidential interviews with detainees in order to establish if there are any detainees in need of international protection and to recommend those detainees for resettlement.

61. The Special Rapporteur underlines that where detainees in terrorism-related cases are to be released and cannot, in view of international law, be returned to their home countries, the primary responsibility to grant international protection rests with the detaining State. In the case of the detention centre at Guantánamo Bay, this responsibility hence lies with the Government of the United States of America.

62. The Special Rapporteur nonetheless welcomes indications that other States may be prepared to receive for resettlement persons originally detained for terrorism-related reasons but against whom no criminal charges have been initiated.

63. Furthermore, in order to create a resettlement framework that is in conformity with human rights, detaining States should not require from receiving countries that

²⁹ See Human Rights Committee, general comment No. 6 (1982), reprinted in HRI/GEN/1/Rev 8, para. 7.

³⁰ Human Rights Committee, *Judge v. Canada*, communication No. 829/1998, *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 40 (A/58/40)*, vol. II, annex V, sect. G.

they detain or monitor those returned in cases where such measures would not have a basis in international and domestic law. Equally, receiving States must not accept such conditions or resort to such measures.

64. The Special Rapporteur acknowledges that there may be valid humanitarian reasons for also resettling persons who after being detained for terrorism-related reasons are not determined to be entitled to refugee status or other form of international protection as a matter of right. In order to address the situation of such persons, detaining and other States need to include these individuals in their resettlement programmes. In the view of the Special Rapporteur, the High Commissioner for Human Rights may be well placed to facilitate such humanitarian resettlement through the use of her good offices.

F. Exclusion from protection

65. Historically, the 1951 Refugee Convention has clearly delineated refugee status as being excluded for certain categories of persons guilty of heinous acts and serious common crimes, to ensure that such persons do not abuse the institution of asylum in order to avoid being held legally accountable for their acts.³¹ In the period following September 2001, exclusion from refugee status has been to the fore in discussions on refugee law. UNHCR adopted new Guidelines on the application of the exclusion clauses in 2003.³² In these recommendations, it is clearly set out that persons who have committed crimes against peace, war crimes and crimes against humanity, serious non-political crimes or acts contrary to the purposes and principles of the United Nations may fall under established criteria in the exclusion clauses. Hence, terrorist acts may also fall within the ambit of application of the exclusion clause.

66. In line with the UNHCR Guidelines, the Special Rapporteur wishes to caution against overly broad interpretations of the exclusion clauses and to emphasize that the exclusion clauses should be applied in a restrictive and scrupulous manner. He also reminds States that international obligations under human rights and refugee law also encompass inclusion of refugees, that is, a duty to offer protection under the 1951 Refugee Convention and other international instruments to those in need of it. In the absence of a universally agreed definition of terrorist acts, some States have included in their national counter-terrorism legislation a broad range of acts which do not, in terms of severity, purpose or aim, reach the threshold of objectively being considered terrorist acts, or the threshold required for exclusion from refugee status. Such broad definitions have in many instances been used to suppress legitimate activities which fall within the ambit of the freedom of opinion, expression or association enshrined in the International Covenant on Civil and Political Rights.

67. Vague or broad definitions of terrorism are extremely problematic. For example, persons seeking international protection are in fact prosecuted for "terrorist-related" offences in their countries of origin when it may actually be that such persons and such prosecutions fall within the definitions of a "refugee" and the

³¹ For the criteria for exclusion from refugee status, see article 1 F of the 1951 Convention relating to the Status of Refugees.

³² Guidelines on International Protection: Application of the Exclusion Clauses: Article 1 F of the 1951 Convention relating to the Status of Refugees (HCR/GIP/03/05), 4 September 2003.

concept of "persecution" in the meaning of article 1 A (2) of the 1951 Refugee Convention. Therefore, careful examination of the legislation and practice of countries of origin of asylum-seekers is necessary to accurately assess the possible application of exclusion clauses in the consideration of applications for refugee status or other status of international protection.

68. Some countries have also included in their legislation on asylum or refugee status determination caveats which exclude broad categories of asylum-seekers from being granted refugee or other protected status. Such provisions may, in fact, even lead to situations where persons who are victims of terrorism will be excluded from protection. The definition of "material support" to terrorist organizations which was included in the United States Patriot Act of 2001 has caused grave difficulties both for asylum-seekers seeking protection in the United States and for refugees seeking resettlement there. It is therefore welcome that the Secretary of Homeland Security has introduced at least a partial waiver to this procedure, although the Special Rapporteur remains concerned that the lifting of the material support ban is not, under United States legislation, open to judicial remedies.

69. The Special Rapporteur again reminds States that the application of the exclusion clauses of the 1951 Refugee Convention or analogous provisions in national laws does not absolve States from other human rights obligations in the case of involuntary return of foreign nationals. The principle of non-refoulement, discussed in detail above, is a rule of customary international law and cannot be derogated from under any circumstances.

70. The Special Rapporteur notes that the listing of terrorists may also have bearing upon international protection. Listing may be carried out on the basis of national practices or based on decisions by international bodies, such as the list prepared by the Al-Qaida and Taliban Sanctions Committee on the basis of Security Council resolution 1267 (1999). The Special Rapporteur dealt with the limitations, criteria and safeguards necessary in such listing procedures in his previous report to the General Assembly (A/61/267, paras. 30-41). He underlines that persons included in terrorist lists remain within the ambit of human rights law, the principle of non-refoulement being applicable and in need of particular attention.

71. The Special Rapporteur reminds Governments of their obligation to grant international protection to persons in need of such protection, in line with their commitments set out in the United Nations Global Counter-Terrorism Strategy. Inherent in this obligation is a duty to apply the exclusion clauses of article 1 F of the 1951 Refugee Convention in a restrictive and prudent manner.

G. Strengthening global responsibility for international protection as part of a comprehensive counter-terrorism strategy

72. Global action to counter terrorism has included, and continues to include, military operations, inter alia in the context of the invasion of Iraq. The protracted violence in Iraq and elsewhere has taken a severe toll on the civilian population and resulted in flows of asylum-seekers.

73. While rejection of certain asylum claims is part of a fair and well-functioning procedure for the determination of the need for international protection, the Special Rapporteur is concerned about practices in many States to reject and carry out

returns of asylum-seekers from countries with extremely volatile security and humanitarian situations, often related to military operations in the context of counter-terrorism. Afghanistan and Iraq are examples of such countries. In these countries, military action, armed insurgency and terrorist acts have led to a security situation where the delivery of even the most basic humanitarian assistance is hampered partly or fully, and where the protection of rights such as access to health care or to basic education is severely jeopardized.

74. In the case of Iraq, the situation has led to an influx of asylum-seekers, estimated in July 2007 at 2 million, to neighbouring countries, while many countries in Europe have all but ceased to grant to Iraqi nationals asylum or other residence status accorded on the basis of a need of protection.³³ Access to asylum procedures may even be hindered.³⁴ Such situations may lead to violations of the principle of non-refoulement, hardship and lack of fulfilment of even most basic human needs both for refugees and persons being forced to return to Iraq.

75. The Special Rapporteur is specifically concerned about the effects that returns in such contexts may have upon particularly vulnerable returnee households, including families with a female caretaker, unaccompanied children and youth who have no family networks in their country of origin. He also draws States' attention to the possibility that children and youth who are unable to access education and whose social and economic rights are not respected may in such situations be vulnerable to recruitment by criminals, armed groups and organizations carrying out terrorist acts.

76. The Special Rapporteur has identified a strong need for greater sharing of responsibility more generally in protracted refugee situations, which today often are intertwined with military insurgency, armed conflict and at times, terrorist acts against civilians. If security and humanitarian concerns are not appropriately addressed before repatriation of refugees and returns of persons found not to be in need of international protection³⁵ take place, there is an imminent risk of further destabilizing situations in the countries of origin and of undermining the protection of human rights of both the remaining population and of returnees. Transparent, profound and responsible analysis of conditions allowing for the return of rejected asylum-seekers or repatriating refugees and facilitating greater international coordination and cooperation to resolve conflicts and stabilize societies are needed. Such action is also necessary so as not to create conditions which may be conducive to the recruitment of terrorists and the spread of terrorism.

³³ Statement by George Okoth Obbo, Director, Division of International Protection Services, UNHCR, at the thirty-ninth meeting of the Standing Committee of the Executive Committee of the High Commissioner's Programme, available at www.unhcr.org/admin/ADMIN/4680c9bb2.pdf.

³⁴ UNHCR deplores forced return of 135 Iraqis by Turkey, 26 July 2007, at www.unhcr.org/news/NEWS/46a8acc30.html.

³⁵ See UNHCR Executive Committee Conclusion on International Protection No. 96 (LIV).

IV. Conclusions and recommendations

A. Conclusions

77. The Special Rapporteur first notes with satisfaction the commitment undertaken by States in the United Nations Global Counter-Terrorism Strategy and its plan of action to the standards of international law, including human rights law and refugee law, in guiding their actions. He sees this as an opportunity for Governments to revisit some of their measures taken since September 2001 and the adoption of Security Council resolution 1373 (2001), and to reassess the compliance of their measures with States' obligations, *inter alia* towards refugees and asylum-seekers.

78. The Special Rapporteur in the execution of his mandate has noted that in many regions of the world, States' counter-terrorism measures often disproportionately affect asylum-seekers, refugees and immigrants. In fact, genuine asylum-seekers with a well-founded fear of persecution may be the largest similarly situated group of persons in the world who are seriously and adversely affected by the post-2001 wave of new counter-terrorism measures. The Special Rapporteur is troubled that terrorism and national security are often used as an argument to enact or maintain more restrictive asylum and immigration regimes. He underscores that human rights law and refugee law, as they have developed over the decades, do take proper account of the security concerns of States, and that the new momentum in addressing terrorism does not, as such, justify the revamping of standards and principles of international protection.

79. In this report, the Special Rapporteur has sought to highlight some of the areas in which counter-terrorism measures may have an adverse impact on the international protection regime and the right to seek asylum, namely pre-entry apprehension and screening measures, detention of asylum-seekers and immigrants, application of the principle of non-refoulement, repatriation or resettlement of detainees in terrorism-related cases, exclusion from protection and the global responsibility for the international protection regime. Safeguarding and preserving the institution of asylum, including through non-rejection at frontiers and ensured access to asylum procedures, will require greater solidarity among States and better cooperation between States, UNHCR and deliverers of humanitarian assistance and development aid. At the same time, such a development will pave the way for greater stability and better respect for human rights in post-conflict situations, thereby narrowing the scope for potential recruitment of terrorists and support for terrorism.

B. Recommendations

80. In respect of pre-entry interception and screening measures the Special Rapporteur recommends that States, in cooperation with the Office of the United Nations High Commissioner for Refugees:

(a) Analyse the impact of pre-entry immigration control measures on the institution of asylum and the protection of refugees and other persons seeking international protection;

(b) Ensure that guidelines and practices in all military and border control operations involving interception or other pre-entry mechanisms are clear and fully respect the pertinent principles and obligations under international law, particularly refugee law and human rights law, towards persons seeking international protection;

(c) Establish national procedures for the determination of refugee and other protection statuses in line with international standards, as a means to create fair, reliable and efficient national systems of immigration control.

81. In order to secure compliance with well-established international standards in the field of the detention of asylum-seekers, refugees or immigrants, the Special Rapporteur urges States:

(a) To ensure that their legislation on immigration detention contains clear, transparent rules that take into account the requirements of necessity, proportionality, non-arbitrariness and non-discrimination, as required by refugee and human rights law;

(b) Not to depart from the right to judicial review of the lawfulness of any form of detention which, according to the Human Rights Committee, is not subject to derogation even at times of a public emergency³⁶ and, given the vulnerable situation of detained immigrants, to ensure that judicial review of any form of immigration detention is made automatic (mandatory) within a reasonable time, such as 48 hours;

(c) To ensure the right to effective access to legal counsel from the moment of detention, including by those detained on grounds of immigration law;

(d) To set up independent oversight mechanisms for the monitoring of the detention of immigrants and to ensure access by UNHCR or its designated partners to detention facilities;

(e) To open up all places of detention, anywhere in the world, to visits by the International Committee of the Red Cross, including situations where terrorism suspects are held in proxy detention at the request of another State.

82. Emphasizing the non-derogable obligation of States to respect the principle of non-refoulement, enshrined in respect of persecution in the 1951 Refugee Convention and in respect of other human rights violations in several regional or universal human rights treaties, the Special Rapporteur calls upon States:

(a) Not to return any person, even in cases related to terrorism, to his or her country of origin or a third State whenever there is a real risk of persecution, torture, or any other form of inhuman, cruel or degrading treatment or punishment, or the application of capital punishment in breach of the international obligations of the sending or receiving State;

(b) To ensure access to an independent and impartial, preferably judicial, review in cases of removal and to ensure that pending removal orders for such review are suspended;

(c) To exercise restraint in respect of so-called diplomatic assurances provided by the receiving State not to subject a person to torture or other inhuman treatment, as this can never replace the removing State's obligation to carry out an

³⁶ General comment No. 29 (2001), reprinted in HRI/GEN/1/Rev.8.

individual assessment of whether a real risk of torture or cruel, inhuman or degrading treatment or punishment exists in respect of the person;

(d) To ratify human rights treaties relevant to the principle of non-refoulement, including the 1951 Refugee Convention, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the optional protocols to the latter two treaties.

83. On the issue of release, repatriation and resettlement of detainees held for terrorism-related reasons, including from the United States military detention facility at Guantánamo Bay, the Special Rapporteur recommends:

(a) That the United States of America close down without delay its military detention facility at Guantánamo Bay and that the detainees be either put on trial for crimes they have allegedly committed or released;

(b) That, irrespective of the primary responsibility of the United States of America for the release, repatriation and resettlement process of Guantánamo Bay detainees not subject to criminal proceedings, all States be prepared to receive for resettlement persons originally detained for terrorism-related reasons but against whom no criminal charges have been initiated;

(c) That all States cooperate fully with UNHCR in establishing whether detainees are in need of international protection and to enable UNHCR to assist in the resettlement of detainees claiming to be in need of such protection, inter alia by allowing UNHCR to make an assessment of the situation of each individual detainee, including through confidential interviews with detainees;

(d) That the United States of America not require that receiving countries detain or monitor those returned in cases where such measures would not have a basis in international and domestic law, and that receiving States not accept such conditions,

(e) That detaining and other States include in their resettlement programmes persons who may not be entitled to refugee status or other form of international protection as a matter of right but for whom there are valid humanitarian reasons for resettlement, and that the High Commissioner for Human Rights make use of her good offices in facilitating resettlement in such cases.

84. As to the exclusion of persons for terrorism-related reasons from refugee status or other forms of international protection, the Special Rapporteur:

(a) Calls for a restrictive and scrupulous application of exclusion clauses, including through their strictly individual application and with particular caution taken as to national definitions of terrorist acts in the countries of origin of persons seeking international protection;

(b) Urges States not to include in their national immigration and asylum legislation definitions relating to exclusion from international protection that would go beyond the recommendations of UNHCR,³⁷ such as through the erroneous application of the exception to non-refoulement contained in article 33 (2) of the

³⁷ See, e.g., UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (HCR/IP/4/Eng/REV.1), January 1992, paras. 147-163.

1951 Refugee Convention as an additional exclusion clause, which may effectively hinder persons in need of protection from obtaining asylum or some other protection status.

85. In order to strengthen global responsibility for international protection as part of a comprehensive counter-terrorism strategy, the Special Rapporteur recommends:

(a) That States and intergovernmental organizations commit themselves to a greater sharing of responsibility in protracted refugee situations, which today are often intertwined with military insurgency, armed conflict and at times, terrorist acts against civilians;

(b) That such joint efforts be based on a transparent, profound and responsible analysis of conditions allowing for the return of refugees as well as of the existence and risk of conditions that may be conducive to the recruitment of terrorists and the spread of terrorism, and greater international coordination and cooperation to resolve conflicts and stabilize societies.



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**Promotion and protection of human rights: human rights
situations and reports of special rapporteurs and representatives**

Situation of human rights in the Democratic People's Republic of Korea

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, Vitit Muntarbhorn.

Summary

The present report provides an analysis of the human rights situation in the Democratic People's Republic of Korea, particularly from the angle of sustenance (rights pertaining to food, nutrition and related matters); freedoms (rights pertaining to security of the person, humane treatment and justice); asylum (rights pertaining to refugees/those seeking refuge); vulnerability (rights concerning specific groups); and responsibility (rights concerning the responsibility of the State authorities to protect human rights and fundamental freedoms, and related accountability).

The current situation of human rights in the Democratic People's Republic of Korea is characterized by a number of key violations in a variety of fields. The environment for the promotion and protection of human rights was further undermined in 2006 by the various missile and nuclear tests carried out by the country in the face of global condemnation and subsequent Security Council resolutions imposing sanctions on the country. The atmosphere in 2007 proved to be more encouraging, with the reported disablement of the nuclear facility in the country and progress in the six-party talks, involving China, the Democratic People's Republic of Korea, Japan, the Republic of Korea, the Russian Federation and the United States of America.

* A/62/150.



Taking stock of the human rights situation at the ground level in the country, however, regrettably it is the ordinary people of the Democratic People's Republic of Korea who suffer at the hands of the authorities and who bear the brunt of systematic and pervasive abuses.

The report addresses recommendations to both the Democratic People's Republic of Korea and the international community. They include a call to the Democratic People's Republic of Korea to abide by its international obligations under the various human rights treaties to which it is a party and by international law; to shift military expenditure to the human development sector and reallocate national resources to protect human rights and promote human security; to facilitate access to humanitarian aid, respect the need for monitoring to ensure that aid reaches target groups and build food security through sustainable agricultural development with broad-based people's participation; to reform its prison system, eliminate custodial violence and promote due process and the rule of law; to address the issue of abductions effectively; to enunciate a clear policy of not punishing those who leave the country without permission, desist from punishing returnees, and amend national laws and train its officials accordingly; to tackle the root causes leading to refugee outflows and to criminalize those who exploit them in the process of human smuggling, trafficking and extortion, while not criminalizing the victims; to protect the rights of women, children and other groups, in particular by addressing their vulnerable positions and ending discrimination; to act responsibly and accountably towards its population by preventing and curbing human rights violations in law and practice; and to enable the Special Rapporteur to enter the country to assess the human rights situation at the ground level and offer advice on needed improvements.

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I. Introduction

1. The Special Rapporteur warmly thanks all Governments, non-governmental organizations and international organizations which assisted him in carrying out his functions during the year.
2. The mandate of the Special Rapporteur was established in 2004 by the Commission on Human Rights by its resolution 2004/13. In 2006, the mandate was extended for one year by the newly formed Human Rights Council, which assigned the Special Rapporteur the task of preparing and submitting reports to both the General Assembly and the Council. The mandate encompasses a variety of questions relating to civil, political, economic, social and cultural rights, ranging from humanitarian aid (especially food aid) to asylum, abductions of foreigners and related transgressions. In late 2006, the Special Rapporteur also carried out a field visit to Japan, the Republic of Korea and Mongolia to assess the impact of the human rights situation in the Democratic People's Republic of Korea on those countries. The present report covers the situation until the middle of 2007.
3. On the constructive side, it can first be recalled that the Democratic People's Republic of Korea is a party to four human rights treaties: the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; and the Convention on the Rights of the Child. It has also submitted reports under these treaties and has appeared before the various monitoring bodies established thereunder. Notably, in 2004, the Government invited the Committee on the Rights of the Child to visit the country.
4. Partly as a follow-up to the various concluding observations by the treaty bodies, the Democratic People's Republic of Korea has undertaken some key law reforms, such as revision of the criminal code and the criminal procedure code, in 2004 and 2005. In 2004, the authorities also published a legal compendium for public use. However, major challenges concerning the implementation of human rights remain.
5. The authorities have also allowed the presence of a number of United Nations agencies in the country and continue to work with them on various aspects of human development. For instance, the Government cooperates with the United Nations Children's Fund (UNICEF) on child-related programmes. The recent UNICEF report entitled "Analysis of the situation of children and women in the Democratic People's Republic of Korea"¹ notes that "the particular strength of the (country's) policy framework lies in its comprehensiveness, integration and consistency in addressing the interests of children and women. It has been aligned with the collective production system. The Government has proactively broadened and updated its laws and policies on an ongoing basis, also making an effort to harmonize with international innovations and standards".
6. Under the umbrella of the six-party talks, progress in the disablement of the nuclear programme of the Democratic People's Republic of Korea is welcome and is expected to have a positive impact on the human rights situation in the country. It will be recalled that, in February 2007, at the third session of the fifth round of the talks, the parties agreed upon "initial actions for the implementation of the joint

¹ Available from www.unicef.org/dprk/situationanalysis.pdf.

statement" calling for the disablement of the Yongbyon nuclear facility and other measures, as well as for parallel provision of energy and other assistance from other countries. By the middle of the year, it was reported that the disablement process was being implemented and the promised first batch of fuel oil assistance (50,000 tons) from other countries was arriving. Bilateral and other talks between the Democratic People's Republic of Korea and other key players were also being held through various groups on the following issues: denuclearization of the Korean peninsula; normalization of relations between the country and the United States of America; normalization of relations between the country and Japan; economy and energy cooperation; and the north-east Asia peace and security mechanism. Several of the issues covered by these talks have a direct bearing on human rights.

7. It is of interest to note that the meeting of the heads of delegation of the sixth round of the six-party talks in Beijing issued a press communiqué in mid-2007, which included the following points:

(a) The parties reiterated that they would earnestly fulfil their commitments outlined in the joint statement of 19 September 2005 and the agreement of 13 February 2007;

(b) The Democratic People's Republic of Korea reiterated that it would earnestly implement its commitments to a complete declaration of all nuclear programmes and disablement of all existing nuclear facilities;

(c) Economic, energy and humanitarian assistance up to the equivalent of 950,000 tons of heavy fuel oil would be provided to the Democratic People's Republic of Korea;

(d) All parties undertook to fulfil their respective obligations as outlined in the joint statement of 19 September and the agreement of 13 February in line with the principle of "action for action".

8. The Special Rapporteur continues to invite the Democratic People's Republic of Korea to respond to the mandate as a window of opportunity to engage with the United Nations. It is thus regrettable that, to date, the authorities of the country have declined to cooperate with the Special Rapporteur.

II. Situation of human rights

9. Despite the country's formal commitment to human rights through national laws and the ratification of international human rights treaties, the human rights situation remains grave in a number of key areas. It should be recalled that the country is under a non-democratic regime that adheres to a "military first" policy, which depletes national resources and creates budgetary distortions in favour of the ruling elite and militarization, in the face of many shortages and deprivations suffered by the population. In 2006, that quagmire was aggravated by various missile and nuclear tests carried out by the authorities, which led to global condemnation. These irresponsible and provocative acts undermined the possibility of aid from other countries, which reconsidered their contributions to the Democratic People's Republic of Korea. While progress was being made in the implementation of the above-mentioned "initial actions for the implementation of the joint statement", the Government also carried out various missile tests in 2007, which exacerbated its isolation.

10. Many violations in the field of civil, political, economic social and cultural rights persist in the country. Examples of violations are given in the paragraphs below.

A. Sustenance: rights pertaining to food, nutrition and related matters

11. As noted in the previous reports of the Special Rapporteur, the country has been suffering from a severe food shortage since the 1990s.² That shortage was caused by both natural disasters and mismanagement on the part of the authorities, aggravated by the overemphasis on militarization and failure to generate food security owing to unsustainable agricultural development. In the 1990s, the Government started to accept food aid from outside the country, particularly through the World Food Programme (WFP). In 2002, the authorities moved away from the age-old public distribution system, whereby the State provided rations to the people, to a more market-oriented experiment, whereby people were paid more wages and were expected to fend for themselves by gaining access to food through the market system. This led to major disparities owing to a substantial rise in food prices and the marginalization of various vulnerable groups in the process. However, in 2005, the authorities started to clamp down on the various markets by banning cereal trading, for fear of losing their grip on the population, and have since reintroduced the public distribution system.

12. In 2005/06, the authorities also demanded that the international agencies present in the country shift from humanitarian aid to a more development-oriented framework and, in the process, scaled down the presence of various foreign humanitarian agencies in the country. One consequence was a reduction in the monitoring of aid coming into the country. While the 2005 harvest was more bountiful than in previous years, in the middle of 2006 major floods wreaked havoc on the harvest, resulting in a severe food shortfall. In 2006, WFP began its two-year Protracted Relief and Recovery Operation, aimed at delivering food aid amounting to 150,000 tons of commodities to 1.9 million people at a cost of \$102 million. Actual operations started in June 2006 on the basis of a letter of understanding with the authorities, principally targeting aid to women and young children. A number of factories now receive support in order to produce fortified biscuits and blended foods.

13. External aid has been less than forthcoming as a reaction to the missile and nuclear tests carried out by the country. By the end of 2006, WFP was able to reach 29 counties out of the projected 50 and was able to assist only some 740,000 beneficiaries. WFP had received only 12 per cent of the required funding, and available food stocks were expected to be exhausted by the second quarter of 2007.

² See Human Rights Watch, "A matter of survival: the North Korean government's control of food and the risk of hunger", Human Rights Watch, New York, vol. 18, No. 3 (c) 2006. With regard to the political impact of the nuclear test and policy choices, see also International Crisis Group, "North Korea's nuclear test", Asia briefing No. 56, Seoul/Brussels, 13 November 2006; and Stockholm International Peace Research Institute and the Center for Security Studies at the Swiss Federal Research Institute of Technology, "Tools for building confidence on the Korean peninsula" (Stockholm/Zurich, 2007).

On a related front, the public distribution system was only able to fulfil part of the food and nutritional needs of the population and the food shortage has continued.³

14. According to a WFP food security report update of June 2007, on 26 June 2007, the Republic of Korea announced that a shipment of 400,000 tons of bilateral rice aid would be sent in July in response to the positive developments in the six-party talks. However, even with such recent confirmed food aid donations, the food deficit remains high (around 500,000 tons or 10 per cent of total annual food needs), notably with short-term supply problems. In terms of access to food, the attempts of the Government to revive the public distribution system in October 2005 led initially to some improvements, but the latest information indicates that distributions have returned to pre-revival levels, and do not reach the majority of the population. Owing to such problems, only a small proportion of the population in the Democratic People's Republic of Korea relies on Government rations as their primary source of food. While the national food economy has become increasingly marketized, cereal prices are constantly increasing. Since October 2006, cereal market prices in Pyongyang have increased significantly. For example, the price of imported rice, which is consumed by the poorest population, has increased by 26 per cent.

15. WFP has supported the establishment of a food security theme group in the country to promote inter-agency collaboration, although a key challenge is to collect data where increasingly limited access is given to humanitarian and development agencies to the poorest areas.

16. In June 2007, WFP was given food assistance worth over \$20 million by the Republic of Korea for the Democratic People's Republic of Korea, which enabled it to bolster feeding programmes for schools, at-risk children, small children and pregnant women. The agency hopes to reach the projected 1.9 million people in the target group, thus doubling the current access to some 700,000 people.

17. These developments should be seen in the light of the continuing prevalence of malnutrition in the country. A survey carried out in 2004 by United Nations agencies found that 37 per cent of young children suffered from malnutrition, while one third of mothers were both anaemic and malnourished. While prospects for an improved harvest of cereal crops are favourable in 2007, there is still a serious food deficit in the country, amounting to about 1 million tons, and about one third of all North Koreans are struggling to make ends meet.

18. The shortage of food continues to have a major impact on the needy population, and the non-governmental sector has reported various deaths from starvation in 2007.⁴ This situation is compounded by the decline in medical services and the shortage of medicines, fertilizers and electricity. Tuberculosis is also widespread.

19. It is important to underline the need to generate food security in the country, for which no foreign aid could be a substitute. A draft country programme was recently proposed by the United Nations Development Programme and the United Nations Population Fund, highlighting five priorities for 2007-2009: enhanced economic management; sustainable food security to improve the quality of life;

³ FAO, "Crop prospects and food situation", No. 3, October 2006.

⁴ *North Korea Today*, eighth edition, Research Institute for North Korean Society (Seoul, July 2007).

sufficient energy supply for economic development; social development to improve the quality of life of the people; and an improved environment for sustainable development (DP/DCP/PRK/2). Examples of projected activities include a sustainable rural energy development programme; the establishment of an agricultural databank; an agricultural seed development programme; the reduction of pre- and post-harvest losses; a demonstration project for an integrated mountain and watershed management system; an integrated environmental and early warning system for preventing environmental degradation and natural disasters; and a policy and technical base for small-scale generation of wind energy. However, support from the international community diminished in the wake of the furor caused by the arms tests in 2006, although the atmosphere in mid-2007 seems more encouraging.

B. Freedoms: rights pertaining to security of the person, humane treatment and justice

20. In recent years, there have been some legislative improvements which are expected to have a positive impact on the security of the human person. For instance, reforms of the criminal law noted earlier provide more certainty in the application of the law. For instance, in 2001:

The UN Human Rights Committee in its concluding observations recommended that Article 10 of North Korea's Penal Code was incompatible with Article 15 of the International Covenant on Civil and Political Rights, which mandated the realization of "the principle of no criminality with prescribed laws". In the process of revising its Penal Code in 2004, North Korea has deleted the section allowing analogous interpretations and incorporated the principle of criminality based on prescribed laws. Article 6 of the Penal Code reads, "The State shall charge criminal responsibilities only in cases of crimes prescribed in the Penal Code". At the same time, the Penal Code is now much freer from a variety of unclear and nebulous expressions that had permitted disparate interpretations. The revised code defines more specifically various acts that constitute criminal activity under the law. As a result, the total number of articles in the code was expanded from 161 in 1999 to 303 in 2004. The number of articles defining various crimes also dramatically increased from 118 to 245, thereby delineating in more detail the criteria for determining punishable crimes.⁵

21. A large number of provisions concerning anti-State activities give rise to concern because of their excessively broad scope and the way that the regime might use such provisions to repress any form of political dissent. For instance, there are 14 types of "anti-State" and "anti-people" crimes; 16 types of crimes disturbing the national defence system; 104 types of crimes injurious to the socialist economy; 26 types of crimes injurious to socialist culture; 39 types of crimes injurious to

⁵ See "White Paper on human rights in North Korea 2006", Korean Institute for National Unification (Seoul, 2006). See also the concluding observations of the Human Rights Committee: Democratic People's Republic of Korea (CCPR/CO/72/PRK).

administrative systems, and 20 types of crimes harmful to socialist collective life.⁶ Several are punishable by the death sentence.

22. Given the repressive nature of the State and the Government's cult-based fiat, basic freedoms are markedly constrained. There are continuing reports of acts of violence committed by the State authorities, such as torture, public executions, persecution of political dissidents and substandard prison conditions, despite the legislative improvements noted above. There is a large variety of detention centres, ranging from those for political dissidents to those for common criminals, as well as re-education camps. They appear under various names, such as *gwansiso* (political labour camp), *gyohwaso* (long-term prison labour camp), *jipgyulso* (detention facility) and *rodongdan yundae* (labour facility). Those who have left the country report various forms of torture and inhuman and degrading treatment.⁷ These allegations are confirmed by the interviews that the Special Rapporteur had with various refugees whom he met during the year. Violations of human rights affecting persons in detention and lack of due process of law are extensively documented in recent non-governmental publications.⁸

23. Freedom of expression and association and access to information are impeded by the closed nature of the State and rigid control over information flows and the media. According to information received, in October 2006, the authorities threatened independent radio stations run by exiles and operated from another country. Another source indicates that the local police monitor sales of radios so as to ensure that they are pretuned to government stations and are sealed before they go on sale. However, despite prohibitions against listening to foreign programmes, the increasing number of radio sets available through nearby border trade opens the door to more access to foreign broadcasts. Those who have left the country also note that mobile phones are increasingly available in the border areas, providing opportunities for calls across the border.

24. In relation to freedom of association and assembly, one incident should be noted as a manifestation of the people's desire to express themselves and to seek accountability. One source reported that a mass riot by tradesmen took place on 17 December 2006 in Hoiryeong, North Hamkyong, when they were compelled to vacate market premises, even though they had paid reconstruction expenses to the authorities.⁹ Calm returned after the market authorities negotiated a settlement.

25. Despite official claims that religious freedom is allowed, reports indicate the contrary. Indeed, any imputed liberalization on this front tends to be due to the lure of money, as noted by the Korean Institute for National Unification:

The reason North Korea is changing its religious policy in terms of legal and institutional arrangements is to maintain religious repression internally amid deteriorating food shortage ... and the unruly social environment, while

⁶ See "White Paper on human rights in North Korea 2006", Korean Institute for National Unification (Seoul, 2006).

⁷ See Citizens' Alliance for North Korean Human Rights, "North Korea: Republic of Torture", December 2006 draft. See also Amnesty International Report 2006: *The State of the World's Human Rights*, Amnesty International (London, 2006).

⁸ See for example David Hawke, *Concentrations of Inhumanity*, Freedom House (Washington, 2007); and *North Korea: A Case to Answer — A Call to Act*, Christian Solidarity Worldwide (London, 2007).

⁹ Reported by *The Daily NK*, 17 December 2006.

expanding contacts with the international community through various religious channels. In short, North Korea is utilizing religion as a means of gaining foreign currency.⁸

26. On another front, human rights violations, in the form of abductions, have had a particularly profound impact on foreigners. A number of Japanese nationals were abducted in the 1970s, probably with the aim of using them to train spies or to use their identity for espionage purposes. While five individuals have returned to Japan, other cases remain unsolved, mainly owing to inadequate cooperation and follow-up on the part of the Democratic People's Republic of Korea.¹⁰ Furthermore, there are longstanding cases of missing persons from the Republic of Korea who might have been abducted,¹¹ as well as more recent claims of abductions of other nationals from Thailand, Lebanon and some European countries.

27. It is incumbent upon the authorities of the Democratic People's Republic of Korea to ensure transparency and provide redress as expeditiously as possible. There were indications in mid-2007 that the authorities in these cases might be more willing to address the issue, with political commitment from the top.¹²

C. Asylum: rights pertaining to refugees and those seeking refuge

28. With regard to the asylum situation during the year, the Special Rapporteur was appraised that it was "a major business". There are many intermediaries exploiting those who seek refuge in other countries and this is interlinked with rampant human smuggling, trafficking and extortion. The exploiters range from criminals to public officials in various countries, given that asylum by its very nature concerns several countries and is a trans-frontier phenomenon. There is another message that resonates in this scenario: those who seek refuge should not be criminalized or penalized, because they are the victims whose rights need to be respected accordingly. Often they have no choice but to leave the country of origin by paying intermediaries, at times landing in dire situations.

¹⁰ With regard to the Republic of Korea, Inter-Korean Red Cross talks have been a useful venue to help reunify families. In paragraph 59 of the previous report of the Special Rapporteur submitted to the Human Rights Council (A/HRC/4/15), references were incorrectly made to the International Committee of the Red Cross, they should read "Inter-Korean Red Cross talks" instead.

¹¹ See pamphlet entitled "Abductions of Japanese citizens by North Korea", Ministry of Foreign Affairs of Japan (Tokyo, April 2006). See also International Crisis Group, "Japan and North Korea: bones of contention", Asia report No. 100 (Seoul/Brussels, 27 June 2005). On 26 June 2007, the representative of Japan in the United Nations working group on enforced or involuntary disappearances stated "the six-party talks process is finally starting to become normalized, and currently working-level delegates of the International Atomic Energy Agency are visiting the Democratic People's Republic of Korea. In the joint statement of the six-party talks, the abduction issue is positioned together with the denuclearization of the Korean peninsula and the normalization of diplomatic relations with Japan and the United States as an objective to be achieved by the six-party talks. Japan believes that it is necessary that joint declarations are carried out on the nuclear issue as well as on the other areas in a well-balanced manner."

¹² *Bangkok Post*, 9 June 2007.

29. A number of issues deserve attention, now that more literature is available on the subject.¹³ First, with regard to the issue of characterization and definition, there have long been debates on the status of those seeking refuge from the country; the Special Rapporteur has already addressed this issue to a large extent in his previous reports. Traditionally, a "refugee" is defined internationally as a person who has left his or her country of origin because of a "well-founded fear of persecution". A key principle of international law, that of "non-refoulement", is that refugees must not be returned to areas of danger. Even in cases where refugees have not left the country of origin for fear of persecution, if they fear subsequent persecution (e.g. fear of being punished if they are to be sent back to the country of origin), they may also be characterized as refugees, or more precisely refugees *sur place*. The underlying rationale behind refugee status is that the refugee is not protected by the country of origin and is thus entitled to international protection.

30. On analysis, many of those who have sought refuge from the Democratic People's Republic of Korea are refugees or refugees *sur place* under international protection. In the interviews which the Special Rapporteur has had throughout the years with scores of those who have sought refuge in neighbouring countries, a number of interviewees have indicated situations of persecution in the country of origin (e.g. a relative who fell out of favour with the authorities, with subsequent persecution of the whole family). A large number of the interviewees also indicated that they had left the country because of hunger and other forms of deprivation. Generally, persons suffering from hunger would not be identified as "refugees" unless the criteria for the classification as described above are fulfilled. In reality, many of the persons suffering from hunger can be seen as refugees *sur place*, because there is the threat of persecution or punishment if they are sent back to the country of origin, on the basis of their having left the country without the required exit visa. It is well known that, in the Democratic People's Republic of Korea, there is strict control over migration. People require an exit visa to leave the country, and face sanctions in the case of failure to abide by the national law.

31. The position stated in 2003 by the Office of the United Nations High Commissioner for Refugees (UNHCR) in a note on international protection needs of asylum-seekers from the Democratic People's Republic of Korea is still relevant today. According to UNHCR, when assessing the international protection needs of asylum-seekers, due consideration should be given to the following factors:

- The very serious human rights situation in the Democratic People's Republic of Korea
- The existence of groups which are particularly prone to persecution, in particular on account of their family or political background
- The practice of the Democratic People's Republic of Korea of penalizing unauthorized departures from its territory for political reasons, with punishment ranging from several weeks to several years or even execution
- The abusive conditions in "re-education" facilities.

¹³ See for example International Crisis Group, "Perilous journeys: the plight of North Koreans in China and beyond", Asia Report No. 122, 26 October 2006; *The North Korean Refugee Crisis: Human Rights and International Response*, U.S. Committee for Human Rights in North Korea, Stephen Haggard and Marcus Noland (eds.) (Washington, 2006); "Life and Human Rights in North Korea", The Society to Help Returnees to North Korea and Citizens' Alliance for North Korean Human Rights, vol. 42, (Tokyo/Seoul, 2006).

32. Based on information available to the Office and without being able to screen citizens individually, the overall assessment of UNHCR was citizens leaving the Democratic People's Republic of Korea without authorization and in danger of deportation were generally considered to be in need of international protection; many of them could have qualified as refugees under the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto. Against this background, the group was therefore of concern to UNHCR, which reiterated the need for the absolute respect of the non-refoulement principle.

33. Recent reports have indicated that the punishments meted out to those forced back to the country of origin may have been reduced, partly because of the reform of the criminal law in 2004. The progressive development of the law has been observed in the White Paper on Human Rights in North Korea, 2006.¹⁴

Article 47 of the 1987 Penal Code stipulated that anyone caught fleeing the country would be deemed as committing treason against the fatherland and be punished with a seven-year or heavier correctional labour punishment. But the revised 1999 Penal Code distinguished the act of border crossing into two categories. Simple acts of crossing of "those crossing the border illegally" would be punished with correctional labour for up to three years (Art. 17). Crossing the border "to flee from the country to another country or with the aim of toppling the Republic" would be sentenced to correctional labour for five to ten years. In more serious cases, correctional labour punishment for over 10 years or death sentences would be handed down, along with confiscation of all properties. Also, Article 233 of the revised 2004 Penal Code defines "border crossing" broadly as "those going and coming across the border" instead of "simple crossing" in the old Penal Code. Furthermore, the level of the mandatory sentence for the crime of "illegal going and coming across the border" was reduced from three years to two years of "labour training" punishment. Since two years of "labour training" is equivalent to one year of "correctional labour", the level of punishment was reduced from three years to one year of "correctional labour".

34. If the sanctions are being reduced, this is a constructive development, but it needs to be monitored further to assess whether there is genuine, systematic mitigation rather than ad hoc reduction of sentencing. Those who have left the country in search of refuge elsewhere should not be punished at all for having left the country without an exit visa. This would also help to fulfil the spirit of article 75 of the Constitution adopted in 1998, which states that "citizens shall have the freedom of residence and travel".

35. Several of the refugees interviewed by the Special Rapporteur had experience of forced return to the country of origin and the punishments inflicted. If those who had left the country were "first timers" without political affiliations, they would be questioned upon return without necessarily being punished. If they had left several times and were then forced to return, punishments would be increased accordingly, beginning with re-education and forced labour.¹⁴ If they had access to religious groups or non-governmental organizations in neighbouring countries, they would be

¹⁴ See also Norma Kang Muico, *Forced Labour in North Korean Prison Camps*, Anti-Slavery International (London, 2007).

punished severely, with long-term incarceration in political prisons for those seen as suspect by the Government.

36. Second, there is the issue of the responses on the part of first-asylum countries. At the national level, such countries have a tendency to shun the term "refugee" for national policy reasons so as to ensure that they have broad discretion in their treatment of the influx. While the euphemism "humanitarian cases" is relatively acceptable when applied to those seeking refuge, the term "illegal immigrants" should be avoided, since it stigmatizes the persons seeking refuge and criminalizes victims.

37. The handling of refugees from the Democratic People's Republic of Korea varies according to the country. Some countries forcibly return them, while others offer temporary refuge. Some countries do not prosecute them for illegal entry, while others do. Some countries keep them in detention in immigration jail or prison, while others keep them in closed facilities under the surveillance of military or intelligence personnel, even though they are not prosecuted as illegal immigrants. In the opinion of the Special Rapporteur, those who seek refuge should not be treated as illegal immigrants and should not be held in detention. Preferably, they should be in held open facilities and, if they are to be kept in closed ones, it should be a measure of last resort, complying with international standards, including the need to avoid indefinite incarceration, and be open to independent monitors, such as UNHCR, which should be allowed access to all areas where those who seek refuge may be present. Interestingly, some sources indicate that forced returns might have declined slightly after the various missile and nuclear tests in 2006, perhaps to show disapproval of the country of origin. However, international law requires that all countries adhere strictly to the principle of non-refoulement and treat those who seek refuge humanely.

38. Third, there is the issue of international burden-sharing. On the one hand, it is incumbent upon the international community to exert effective influence on the country of origin to address the root causes leading to outflows. On the other hand, the international community should help the first-asylum countries in finding durable solutions for the refugees. This may entail policy and resource support and resettlement options in other countries as appropriate. Some countries are already increasingly opening the door to resettle refugees from the Democratic People's Republic of Korea, at times directly from first-asylum countries or via other channels.

39. Fourth, the pattern of refugee arrivals is changing precisely because of the elasticity between the different practices of neighbouring countries. There is a kind of "push-down, pop-up" phenomenon whereby if one country takes a stringent approach towards those seeking refuge, the refugees seek access through intermediaries to other countries with a more lenient approach. From the interviews conducted by the Special Rapporteur with people arriving in various neighbouring countries, two patterns emerge. On the one hand, a number of people spend quite a long time (up to several years) in the first-asylum country before moving to another country. Some are smuggled into other countries while others become victims of various types of human trafficking, such as forced marriage, prostitution or forced labour. There is also a more recent trend of people who transit briefly (for a matter of weeks) a neighbouring first-asylum country before moving to another country. This is currently the situation in South-East Asia, where some countries are

witnessing a larger influx of refugees who have transited briefly a neighbouring country. Nearly all cases interviewed by the Special Rapporteur indicated that they or their relatives had either paid various intermediaries to help them flee the country of origin or promised to pay upon arrival in the final destination country.

40. Along the way, some public officials also profiteer from the situation through extortion; they refuse to release from detention those who have sought refuge unless they are paid accordingly. This also poses a dilemma to non-governmental organizations that seek to rescue them: should they pay up or desist from doing so? It is regrettable that, at times, these organizations are also classified as criminal when they are merely acting as human rights defenders. It is also regrettable that there is a "market value" attached to refugees, who are exploited in a "chain-enchained" manner: every step of the way, from the borders of the country of origin to the final destination country, there is a chain of actors who seek to exploit the needs of refugees and their "worth" in an enchained, slavery-like manner. The situation is all the more disquieting since the majority of those currently seeking refuge are women and children. This aspect is elaborated below in relation to the vulnerability factor.

D. Vulnerability: rights concerning specific groups

41. The previous reports of the Special Rapporteur dealt with the concerns of various groups that may be especially vulnerable in particular situations. This is the case of the women and children who are not part of the elite in the country of origin, bearing in mind the cross-cutting nature of women's rights.

42. A key dilemma is that the proportion of those seeking refuge are women and many have been subjected to human smuggling and/or trafficking. There may be various reasons for this phenomenon. First, smugglers and traffickers are deliberately targeting women. Some male refugees interviewed by the Special Rapporteur indicated that the exploiters prefer to smuggle women rather than men. Second, it is believed that neighbouring countries are less likely to punish women for illegal entry. Third, the intermediaries feel that women are more likely to fulfil their "contractual obligation" of paying for the smuggling services upon arrival in the destination country. Fourth, while previous caseloads were men, the current caseload may partly be the wives or families of the men who exited some time ago and who seek family reunification. In one case examined by the Special Rapporteur in 2006, the wife worked in a cemetery in a key first-asylum country before following her husband to the final destination country. Fifth, the shortage of women for marriage in some areas also exerts a pull factor for trafficking of women for the purpose of marriage and this may also imply less repressive applications of laws. However, there are a number of ensuing complications, such as whether the local authorities are willing to register the children of the marriage.

43. Another issue that has arisen in one final destination country is whether women refugees should be allowed to remarry after a period in the country, given that they are unlikely to reunify with the husbands who remain in the country of origin.

44. With regard to children, the recent analysis made by UNICEF on the situation of women and children in the country identified some constructive features of State policies:¹

- (a) The adoption of compulsory primary education and abolition of tuition fees as of 1956;
- (b) The introduction of compulsory secondary education and the abolition of tuition fees as of 1958;
- (c) The introduction of free education as of 1959;
- (d) Compulsory 9-year education as of 1967;
- (e) Compulsory 11-year education as of 1972;
- (f) The law on nursing and upbringing of children (as a codification of the existing policy) as of 1976;
- (g) Thesis on socialist education (as a codification of the existing policy) as of 1977;
- (h) Free compulsory education for 11 years, including for children with disabilities, as of 1977 and 1999.

45. However, the problem lies in the quality of education, which is further hampered by the decline in school facilities. Education is also a key instrument of indoctrination of the population, with children utilized for political ends from a young age, including through rigid State control over nurseries and kindergartens. A particular concern is the manner in which violence is inculcated in children from a young age as part of the patriotic message to fight the so-called enemies of the country.

46. Various issues concerning child survival, development, protection and participation still need more effective responses from the authorities of the Democratic People's Republic of Korea. Access to food remains a key concern (see sect. A above). Child protection and participation are greatly tested when the children face situations of violence, deprivation, neglect and abuse, especially when the children do not belong to the elite. This is particularly the case for children with disabilities and street-children who might be subjected to substandard institutionalization. The current critical food shortage is also likely to have a severe impact on adults who do not have access to the public distribution system and/or external aid, the decline of which has made elderly persons more vulnerable to deprivation.

E. Responsibility: rights concerning the responsibility of the State authorities to protect human rights and freedoms, and related accountability

47. A key issue raised by many sources in 2006/07 was that of the responsibility of the authorities of the Democratic People's Republic of Korea for egregious human rights violations. The scenario was rendered more volatile by the missile and nuclear tests carried out by the country, which led to unanimously adopted Security Council resolutions imposing a range of sanctions on the country. Interestingly, in the preamble to Security Council resolution 1718 (2006) imposing such sanctions, the issue of human rights is implicitly referred to by the emphasis on "other security and humanitarian concerns of the international community". In December 2006, in its resolution 61/174, the General Assembly expressed very serious concern at

continuing reports of violations, including torture, cruel, inhuman and degrading treatment, public executions, extrajudicial and arbitrary detention, the absence of due process of law and rule of law, forced labour; punishment of refugees forcibly returned from abroad, severe restrictions on freedoms of thought, conscience, religion, opinion, expression, peaceful assembly and association and access to information; violations of women's rights, such as human trafficking; abductions of foreigners; and violations of the rights of persons of disabilities, including their detention in collective camps.

48. The General Assembly expressed its concern at the failure of the Democratic People's Republic of Korea to cooperate with the Special Rapporteur and called for reports from both the Secretary-General and the Special Rapporteur at the sixty-second session. This may be an opportunity not only to provide the human rights situation analysis which the Special Rapporteur has undertaken to date, but also to open the door to other policy options in the context of the United Nations system as a whole.

49. The non-governmental sector has put forward a number of ideas to address the human rights situation in the Democratic People's Republic of Korea. Some entities prefer a softer approach of engagement based on continuing humanitarian aid, while others advocate a harder approach, stressing responsibility and accountability. An example of the latter is based upon the notion of the State's responsibility to protect people from egregious violations. This was introduced in the 2005 World Summit Outcome (General Assembly resolution 60/1, paras. 138 and 139), which set apace a series of United Nations reforms. The responsibility to protect civilians was subsequently reaffirmed by the Security Council in its resolution 1674 (2006).

50. The authors of a study conducted in 2006 contend that the misdeeds of the authorities are tantamount to crimes against humanity, fulfilling the conditions of intent and widespread or systematic attacks on the civilian population.¹⁵ The evidence of crimes against humanity includes persecution and starvation. The authors of the study advocate that the Security Council should adopt a non-punitive resolution under Chapter VI of the Charter of the United Nations calling for accountability on the part of those authorities, given that the misdeeds amount to a non-traditional threat to international peace and security, as exemplified by a wide array of human rights violations, refugee outflows and various criminal acts. If the country fails to comply with such a resolution, further action may be needed under Chapter VII of the Charter.

51. While the study is aimed primarily at State responsibility towards its people, it also points to the individual criminal responsibility which may ensue from crimes against humanity. The question is elaborated upon extensively in the Statute of the International Criminal Court; there is already copious jurisprudence on the issue, from various ad hoc international criminal tribunals, such as the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. Of relevance is article 7 of the Rome Statute, which lists a number of acts classified as crimes against humanity, including murder, deportation or forcible transfer of population, torture, enforced prostitution, persecution against any

¹⁵ "Failure to Protect: a call for the UN Security Council to act in North Korea", U.S. Committee for Human Rights in North Korea (Washington, 2006).

identifiable group or collective on political, and other grounds, and enforced disappearance of persons.

52. Other recently published studies have argued the case for individual criminal responsibility on the part of the authorities of the Democratic People's Republic of Korea.¹⁶ They underline various prohibited acts equivalent to crimes against humanity, including enforced disappearance, deportation and arbitrary imprisonment, enslavement and forced labour, murder, torture and other inhumane acts, rape and enforced prostitution, persecution and extermination. There has also been a call for the United Nations to establish an international commission of inquiry to investigate international crimes in the context of the Democratic People's Republic of Korea.¹⁶ It remains to be seen whether this advocacy will gather momentum.

III. Communications

53. The Government of the Democratic People's Republic of Korea did not reply to a communication, sent by the Special Rapporteur on 18 August 2006, concerning the case of a male national of the Republic of Korea who had reportedly been abducted by a patrol boat of the Government of the Democratic People's Republic of Korea with 11 other crewmen of a fishing boat in 1987.

54. On 22 February 2007, the Special Rapporteur sent a communication concerning two soldiers of the Democratic People's Republic of Korea who were reportedly at risk of imminent execution. It was the understanding of the Special Rapporteur that the soldiers were the commander and the vice-commander of a border post near the town of Hoeryong in North Hamgyong Province. They were reportedly arrested following a Government investigation into the flow of citizens of the Democratic People's Republic of Korea into a neighbouring country, then tried and sentenced to death for assisting citizens of the Democratic People's Republic of Korea to make unauthorized visits to the neighbouring country. The Government of the Democratic People's Republic of Korea did not reply to this communication.

IV. Observations and recommendations

55. The current situation of human rights in the Democratic People's Republic of Korea reveals a number of key violations in a variety of fields. The present report has analysed them from the angle of sustenance (rights pertaining to food, nutrition and related matters); freedoms (rights pertaining to security of the person, humane treatment and justice); asylum (rights pertaining to refugees/those seeking refuge); vulnerability (rights concerning specific groups); and responsibility (rights concerning the responsibility of the State authorities to protect human rights and fundamental freedoms, and related accountability).

56. The environment for the promotion and protection of human rights was further undermined in 2006 by the missile and nuclear tests carried out by the

¹⁶ See *North Korea: A Case to Answer — A Call to Act*, Christian Solidarity Worldwide (London, 2007).

country in the face of global condemnation and subsequent Security Council resolutions imposing sanctions on the country. The atmosphere in 2007 proved to be more encouraging, with the reported disablement of the nuclear facility in the Democratic People's Republic of Korea and progress in the six-party talks.

57. Taking stock of the human rights situation at the ground level in the country, regrettably it is the ordinary people of the Democratic People's Republic of Korea who suffer at the hands of the authorities and who bear the brunt of a myriad of abuses that are both systematic and pervasive.

58. For the future, the Democratic People's Republic of Korea should take the following measures:

- Abide by its international obligations under the various human rights treaties to which it is a party, as well as international law, shift military expenditure to the human development sector and allocate national resources to protect human rights and human security
- Facilitate access to humanitarian aid, respect the need for monitoring to ensure that aid reaches target groups and build food security through sustainable agricultural development with broad-based people's participation
- Reform the prison system to prevent torture, and promote due process of law and the rule of law, such as safeguards for accused persons, fair trial and the building of an independent judiciary
- Address the issue of abductions/enforced disappearances effectively and provide redress to victims and their families
- Enunciate a clear policy of not punishing those who leave the country without permission, desist from punishing returnees, and amend the law and train its officials accordingly
- Tackle the root causes leading to refugee outflows and prosecute those who exploit them in the process of human smuggling, trafficking and extortion, while not criminalizing the victims
- Protect the rights of women, children and other groups, particularly by addressing their vulnerability and ending discrimination
- Act responsibly and accountably towards its population to prevent and curb human rights violations not only by means of law reform but also through substantive implementation of human rights in practice
- Allow the Special Rapporteur access to the country to assess the human rights situation at the ground level and to offer advice
- Engage sustainably with the various monitoring bodies under the human rights treaties to which the Democratic People's Republic of Korea is a party by following up their recommendations and inviting the treaty bodies to visit the country to support improvement
- Seek technical assistance from the Office of the United Nations High Commissioner for Human Rights to help promote and protect human rights in the country.

59. The international community is invited to take the following measures:

- Continue to provide humanitarian aid, especially food aid, on the basis that it must reach the target groups ("no access, no aid"), coupled with relevant monitoring
- Respect the rights of refugees, particularly the principle of non-refoulement, desist from forcibly returning them to the country of origin, and exempt them from the strictures of national immigration laws, which might otherwise lead to the detention of refugees or those seeking refuge
- Utilize dialogue and other interaction to engage with the Democratic People's Republic of Korea to protect and promote human rights, with relevant incentives, graduated influence, and economic and security guarantees where appropriate
- Mobilize the totality of the United Nations system to promote and protect human rights in the country and support processes which concretize the responsibility and accountability of the authorities of the Democratic People's Republic of Korea for human rights violations in order to bring an end to impunity.